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LUNATICS & LAWYERS (In the Press)

CONSCIENCE MAKES HEROES

by
GERALD ABRAHAMS

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AUTHOR'S PREFACE

THE author craves the indulgence of any well-informed reader who happens to know that the organic chemistry relevant to this book is the subject-matter of unsettled controversy. In particular there is doubt as to which pituitary extract (anterior or posterior) would have the desired effect ; and the author is in no position to dogmatize.

Meanwhile the author wishes to express his indebtedness to the scientific gentlemen who have stimulated his thoughts during the progress of this writing ; in particular Messrs. R. F. Goldstein, Ph.D., and Julius Libman, M.D., M.R.C.P., and Surgeon-Lieutenant R. Nairn deserve special mention. In fairness to them let it be said that the mixture is not theirs. The author is also indebted for advice to his valued friend and colleague Mr. Arthur Jalland, who, however, must be exonerated of responsibility for any error that has passed unobserved.

For the rest the publishers believe, and the author piously hopes, that none of the characters in this book bear the remotest resemblance to actual persons.

GERALD ABRAHAMS.

PART I

1

CONSCIENCE MILITANT

“**W**^{HAT} is conscience?” murmured Judge Gosling.
“Call the next case.”

It seemed to Alfred Romilly of counsel that the Conscientious Objector's Tribunal (Judge Gosling presiding) was juridical perfection. The only person in court who made no claim to the possession of a conscience was the Judge. Theoretically that fact should have resulted in a fine impartiality, just as a completely non-moral judge might make a great success of the Divorce Division—to which the Crown accordingly appoints sailors. But in this present case there was a practical result which reduced the proceedings to farce or tragedy. The court had to decide whether the particular applicant or victim did enjoy the kind of conscience that he claimed and whether or not it spoke as quoted. The Judge had no means of recognising a conscience when he encountered one. He could not look and listen through the medium of his own experience, which had left him colour-blind to manifestations of feeling and tone-deaf to sincerity. And as he sat there, thin, grey and dyspeptic, soured by his own failures or shortcomings, and unforgiving of youth, he was only conscious of the duty of young humanity to fight in order to make the world safe for Judge Gosling. And he directed, or misdirected, himself accordingly.

To that end he had perfected a powerful technique, which Romilly, rather painfully, enjoyed witnessing. To a good lawyer facts are the most pliable, friable things in the world, and states of mind are even better. The state of a man's mind may be as brute a fact as the state of the Judge's digestion, but it is a fact which, even more than other facts, is ambiguous and susceptible to the range

of interpretations that ingenuity can find. Judge Gosling—endowed with a clear little intellect and less emotion—was as good at minds as he was bad at consciences.

Most units in the small procession of applicants which went through the witness-box were manifestly averse to the notion of fighting, and allergic to arms. Their reluctance to fight was clear; but this was consistent with a courageous indignation at barbarity, equally consistent with party allegiance, and equally consistent with simple and understandable cowardice. The court knew how to deal with them. Romilly, who, during a temporary lull in the splenetic attention of the Judge, had succeeded in rescuing a young missionary from contact with more sophisticated cannibals than he was accustomed to, stayed on fascinated by the proceedings, as people are fascinated by horror stories of which they already know the conclusion; one would say a villain of melodrama condemning the innocent to a fate as dangerous as death. Also he was interested in the conscientious objector sitting next to him, a dark-browed research chemist, a man with the sombre face of the South Englisher, gloomy now with an additional melancholy, and relieved only by an occasional flash in the deep-set eyes. Romilly knew that this man had more than one University degree, and was not without mentality. For all that, he appeared immature. These strange neighbours, had they been mere spectators, might have given the impression of two scientists, one young, one old, submitting the same parasitic organism to different tests. There was, however, the unusual feature that one of the investigators was soon to be examined (and affected!) by the specimen, while the other was all but immunized and indifferent.

The Judge seemed to doze for a moment, while the Clerk of the Court was collecting papers for the next case.

"Claude Armiger," muttered the Judge, as if in his sleep.

"Claude Armiger," called the clerk, with a whistle of helpful policemen acting as echoes.

The Judge roused himself and took a copious draught of water. The public watched the proceedings as anxi-

ously as it would have watched the breathing of fire or men digging a trench.

"I hope he's still in a coma," muttered Romilly's neighbour, the actual bearer of the improbable and inept name just called.

The remark coincided with a diagnosis that Romilly had himself arrived at: "Let's hope you find him in a sugary mood."

"You've noticed it too."

Armiger looked at Romilly, and Romilly looked at Armiger, with a certain amount of appreciation and respect. One saw a fat, bearish creature (typical of the bear-garden), evidently asthmatic, prematurely middle-aged, but with a face revealing cleverness and a strong mind; the other saw an athletic, sombre youth, sincere, but the more in need of protection by reason of his very sincerity and lack of humour. Further conversation and speculation were prevented by Armiger's progress to the witness-box.

In the box the newcomer presented a more capable and resolute appearance than most of the others. Of medium height, slim and fairly muscular, he looked a better soldier than anybody else who had previously appeared before the tribunal that morning, save that his face—dark, somewhat saturnine, with fanatical eyes—implied intransigence to any discipline or control that he did not impose upon himself.

The Judge looked at him, recognized a "tough customer", helped himself to a further glass of water, and opened a resolute attack.

"Claude Armiger, what is your occupation?"

"Chemist." The reply was cold and firm; above insolence.

"You say that you want your name to remain on the register of conscientious objectors because you have a conscientious objection to war?"

"That is so, your Honour."

"You object to killing?"

"Yes, sir."

"Under whatever necessity?"

"Yes, sir."

The Judge brooded sardonically, as if he could test that proposition as he would.

"Does your conscience prevent you from doing ancillary work, like ambulance-driving and the like?"

"It does, sir."

"Or work in a chemical capacity?"

"Yes, sir."

"Yes?"

"Yes, I can't do it, sir."

The reply, thought Romilly, was unintentionally facetious, but would annoy the court.

The Judge muttered. Then: "You are a research chemist, are you not?"

"Yes."

"A bio-chemist?"

"Yes."

"Do you ever make injections into animals?"

("Injections," noticed Romilly.)

"I do, sir."

"Do they feel pain, or die?"

"Yes, they do—but that's for the good of humanity."

"But not for the good of the sufferer?"

"No, sir."

Like a good tactician, the Judge did not pursue the point, but noticing a slight perturbation in the witness, commenced a more direct attack.

"You object to the taking of human life?"

"Yes."

"I take it that you have consulted carefully with your conscience about this. Have you sought guidance in prayer?"

This permissible but unexpected question, emanating strangely from so Mephistophelean a personage as the learned Judge, evoked no reply.

"Do you pray?"

The repetition was irritable and irritating.

"No, your Honour. Do you?"

Again, thought Romilly, the wit of the humourless.

The Judge's glare, at which he was adept, produced a

mumbled apology which spoiled a good answer. The Judge resumed with panzer efficiency.

"You do not pray, but your conscience tells you—it does tell you things, doesn't it?—your conscience tells you that it cannot allow you to fight."

"Yes, sir."

"That it is wrong to fight?"

"Yes, sir."

"What would you do if somebody attacked you? Would you resist?"

"If somebody actually attacked me physically I should do my best to protect myself from harm, but . . ."

"You would fight back?"

"Yes, but . . ."

"Would you counter-attack?"

"No, sir." Armiger realized that incisiveness was the only possible defence against the Judge, just as counter-attack might be in physical combat.

"Then you wouldn't be defending yourself very well, would you?"

"No, sir—I'm not a good fighter."

"You are aware that you are being attacked now?"

"Only by you, your Honour."

The Judge came as near to smiling as was possible to him. The pincer-movement was complete.

"That's a silly impertinence, isn't it?"

"Yes, sir, and I'm sorry; but I think you are being very unfair to me."

(Romilly thought that Armiger was showing remarkable restraint for a man of his temperament.)

"You would be well advised to show a little more fairness to—and respect for—the court if you want to be heard at all. Meanwhile I haven't finished asking you questions."

The implication, that he hadn't started being unfair yet, reduced the witness to silence and dried any bubbles of mirth in the spectators, who were either objectors themselves or their sympathizers.

"You, and all of us, are being attacked by a ferocious and well-armed enemy."

"I don't agree, sir."

"You don't agree that they are ferocious?"

"No, sir, I don't agree that I am being attacked."

The Judge by-passed the difficult explanation that conscientious objectors require in order to account for wars, governments, parliaments and the like and, with a show of understanding, proceeded to lull his victim before destroying him.

"You think it is an affair of governments, not of peoples?"

The objector grasped at this straw.

"It's a consequence of bad politics and economics."

"Bad economics?"

"A bad distribution of wealth."

"That is Communist teaching, is it not?"

"Yes, sir—and Christian teaching."

"Oh, are you a Christian?"

"Well, not an orthodox one."

The retreat sounded in the words.

"Are you a Communist?"

(The Judge was proceeding extraordinarily tactfully, or was it carefully?)

"Yes, sir," said the objector, verbally signing his enlistment papers. "But that's not why I object to war."

"No, that, you say, is the dictate of conscience?"

"Precisely."

"I shall retire to deliberate on this."

As he rose, there rose with him two inanimate elders, who had all this time sat silently beside him, and who nobody had realized to belong to the court. To Romilly they suggested the Fates and the foregone conclusion.

.

During the ensuing shuffling and coughing everybody rose, and the objector came down from the witness-box and sat beside Romilly as the latter resumed his seat. Romilly felt very sorry for this neighbour of his, though himself convinced of the misguidedness of the conscience of objectors. But he thought a display of sympathy out of place.

"What do you think of my case, sir?" murmured the objector.

"I think," said Romilly, "that the man who is his own advocate very often has a fool for a client."

Armiger frowned, but Romilly managed to smile benevolently at the smouldering chemist. Then, feeling that patronage or aloofness was out of place, with the next remark he patted him consolingly on the back.

"You were beaten by a clever and trained dialectician who had every advantage of terrain."

"But you still think I've lost?"

"My dear chap, I know it."

While they waited for the court to return, the atmosphere became noticeably quieter, and, if possible, less hilarious. As the court filed in after a decent interval (for tea rather than tact), Romilly felt the tenseness of the man sitting beside him. In the court there was a prevalent hoping that the decision be indefinitely postponed, but the Judge, without calling the applicant to the stand, plunged cold-bloodedly into words.

"The applicant, Claude Armiger, a chemist, claims that he is a conscientious objector reluctant to take life or to fight. That objection does not prevent him from experimenting (rightly, of course) on living animals. But he is unwilling to fight, or even to use his scientific skill, to help in the war effort" (this had only been put perfunctorily to Armiger). "He claims that his reluctance to fight is the consequence of the dictate or operation of his conscience. We do not share that view. We are inclined to believe that his attitude is animated by purely political teaching, not by any meditation of a moral kind, and not by any prayer. We are satisfied that the objection is not conscientious. The applicant's name will therefore be struck from the register."

Romilly could not bring himself to look at the victim of this analysis, but felt a tornado raging beside him which dwarfed his own emotions.

"I'll do for you, you sanctimonious old diabetic," came the surprisingly strong voice of Claude Armiger, if only to prove that his objection was not based on cowardice.

"How dare you?" thundered the court.

And to prove that he could defend himself against attack, the unwilling fighter sent a heavily bound book (it was found later to be Osler on Medicine) hurtling through the air towards the Judge, so giving it a sensational character that it had never enjoyed as literature.

Judge Gosling, for the first time in legal memory, achieved hysteria—and a parade-ground voice.

"Arrest that man! I'll commit him."

Somnambulistic policemen began to move, as if in a dream, towards the victim turned hero. But Romilly had sufficiently recovered from the effects of the metamorphosis to take command of the situation. Rising to his feet, he arrested the attention of the Judge.

"You can't do that, your Honour."

"You are telling me I can't commit this man for contempt. In any case, what right have you to address me at all?"

"I am addressing you as counsel, and as a friend of the court—if that is the proper expression." The bearish man was in his pompous, but quick and effective, stride and was dominating the scene most unexpectedly. "I am telling your Honour that you have no power of committal for contempt. Get out quickly," he murmured to Armiger, who reached the door, under cover of a creeping barrage of argument.

Romilly continued, in good voice, holding the attention of both the Judge and the Clerk of the Court away from the fugitive offender. The policeman at the door, wavering in face of the challenge of authority, was glad to let Armiger pass, and be rid of a problem beyond police routine.

"Your only powers, as I see the matter, your Honour, consist in your right to prosecute the man for assault, or to apply to a Divisional Court for an order."

The Judge (who knew Romilly too well to be merely rude to him) managed to maintain the remnants of dignity—and he was sufficient of a lawyer to be interested.

"Is there no precedent, Mr. Romilly?"

The Clerk of the Court was bobbing about, gaping for

a pause in which to interrupt; but the conversation was too fast, and he abandoned hope and sat down.

"Magistrates," declared Romilly, "have been assaulted before now and have retaliated with an order to arrest, with a view to immediate conviction of assault. But I conceive that the creators of this Tribunal—in the nature of things—would not give you a power to try an assault. Your subject-matter (may I put it so?) does not appear to call for it."

"The legislature surely contemplates that any Tribunal may be unruly," put in the Clerk, getting in a word at long last.

"The legislature is assuming that conscience does not make heroes."

The Judge contrived not to join in the mirth that followed this sally, but expressed his feelings in a harsh witticism.

"Nevertheless, I'll endeavour to see that this man receives the conviction due to his courage."

The court was rising.

Romilly bowed and retired while the Judge gave the necessary instructions to his clerk for the vindication of judicial dignity. The saviour of the situation joined an effusively grateful, but still objecting, objector outside the court.

"Mr. Romilly, will you defend me if I murder that man?"

"Free of charge," replied Romilly.

2

SCENE OF A CRIME

THE country town of Daneford lives on litigation as other villages live on lavitation. Its inhabitants earn their livelihood with the aid of money expended, during Assizes and Sessions, on the washing of dirty

linen. Assize town on a busy circuit and the headquarters of County, Borough, and Licensing Sessions; equipped, further, with a County Court, and now with various war-time tribunals, including the Conscientious Objector's Tribunal, the town flourishes on the proceeds of its own and other people's troubles. And one of the main conduit pipes through which wealth is circulated (having been liquefied) is the Dragon Hotel. At all material times, in this rambling, renovated Tudor building, which, with the Assize Courts, constitutes the architectural beauty of the town, and which has never been seriously challenged by the cathedral either as a building or as a communal centre, there slept and ate and drank, particularly drank, the most important people in the town at any given moment—to wit the Judges, the barristers, the witnesses and all the litigants. Further, in the breweries and distilleries of the neighbourhood, Sir Charles Lumley, Daneford's guinea-pig M.P., was a considerable shareholder. In the Dragon Hotel, accordingly, he, from time to time, held court with the miscellaneous band of ticket-of-leave men, *souteneurs*, and undischarged bankrupts who constitute the normal following of any guinea-pig M.P. These, never being short of money for solid or liquid refreshment, were popular with the management, and gave the place that air of temporary affluence and prosperous respectability with which hotels generally reflect the pragmatic standards and values of a pleasure-seeking age.

An object lesson in solvency, for the purposes of the Bankruptcy Act; and emphatically not a place to be chosen, in broad daylight, as the proper scene for the drama of conscience; notwithstanding that it housed the protagonists in more than one quarrel involving conscience. But at night, and from the inside, there might be noticed by the discerning, of whom the barrister Romilly was one, a certain atmosphere behind the atmosphere, a back-cloth to the proscenium, which suggested something vicious lurking beneath the pleasant ephemerality of the place and its furnishings. A garish supply of chromium platings and brightly polished woodwork in

the drinking-rooms did not conceal successfully the age and decrepitude of the building. Rather, they suggested the false teeth, *toupé*, and immaculate clothing of a very old rake, rejuvenated in part, but completely unreformed. The more comfortable parts of the lounge expressed in oak a more dignified senility, but suffered by the unnecessary contrast. The male staff, recruited, owing to the exigencies of the war, from veterans of the last and even previous hostilities, bore their wounds and scars and sufferings in front of them through an atmosphere of forced jollity, suggesting that Dantean circle of *Inferno* where pleasures abound to excess, and the retributions that wait inevitably on a variety of sins. If, in short, there existed in the hotel any person with a conscience, there was much in the atmosphere that was calculated to disturb it.

At the material time the hotel was peopled by two groups. On the one hand, the moral insolvents who constitute the average of the better-class saloon bar; on the other hand, the legal ornaments and accessories who adorned it from time to time with a rather harder brightness. Ethically, the difference between the two groups tended to diminish. Romilly, spectating from the lounge, and watching at least one of his colleagues—a man named Hewitson—drinking between the guinea-pig M.P. and a corrupt-looking solicitor's managing clerk named Twemlow, with both of whom he exchanged brightnesses at the expense of conscientious objectors, reflected that this was equality. By that law of physics which is so evident in hotels, standards sink to averages, and averages fail to rise appreciably. The bar-lounger apes the barrister successfully, if even one barrister be capable of acquiring the values of bar-loungers.

Across his vision drifted the chilling figure of Judge Gosling, complete with police escort, on his way to the staircase. The unfriendly smile which the Judge directed to Romilly crystallized and froze the latter's thoughts into bleaker, because more personal, reflections.

Sitting in the hotel lounge, which seemed suddenly to have become colder through the glancing of an evil eye

or the manifestation of an ill omen, Romilly reflected that never in his thirty years of legal experience had he found himself in an atmosphere so charged with ill-feeling; ill-feeling which made the practice of the law, in which he had grown prematurely, but not now unpleasantly, old, seem for once cold and unacademic; ill-feeling, moreover, with which this time, at least, he found himself in sympathy. This sympathy was acute because it brought home to Romilly more strongly than ever the realization that in his years of practice he had been merely sharpening an instrument that in most hands is apt to hurt people rather than to heal them; that now he shared with others a power of burning the green out of life instead of making two blades of grass grow where one grew before. And in that unfortunate craft, though he was now successful, success had come "when life had said, It's late". Other soldiers of misfortune fought their battles less seriously and grew into amiable entities or nonentities. Others grew embittered and, even in their retirement, even when their retirement took the lucrative form of judicial appointment, continued to taste gall and wormwood and to dispense it. Of such was Judge Gosling—in a different way from Romilly unreconciled to "escape".

As his mind reverted to Judge Gosling, Romilly became aware, of what he had all but failed to notice, that the Judge had been escorted by more police than usual. This, and something in the morally crepuscular atmosphere of the place, suggested forcibly to the watcher the no longer fantastic thought that, in this hotel, where there were staying so many of the litigants and applicants who were concerned with Judge Gosling, either in his capacity as County Court Judge, or as petty magistrate (happy phrase), or as Chairman of Quarter Sessions, or as Chairman of the Objector's Tribunal—among so many who might entertain ill will for him the Judge was by no means safe.

Let it not be supposed that the practice of unsuccessful litigants in England is to wreak violence on the Judge who has done them wrong. America has experimented in that direction with interesting results. If both sides are

equally "tough", the result is a rough justice in which only the Judge loses. But in England even the unjustly convicted never think of exacting retribution against the judicial officer who has phrased their sentences. According to the best opinion, the task, if undertaken, should fall to counsel, who, though he rarely goes to gaol, is always on trial, and who vicariously suffers for his client all the spleen and melancholy that the sight of a human being so often stimulates in Judges.

In a large, rambling, old-fashioned inn of this type, which doubtless boasted a reputation for law-abidingness (unless old Queen Elizabeth had patronized it), and which probably did not employ a house detective, somebody—anybody—might get away with murder. What was to stop any person from wandering round the rooms and corridors at night and doing harm, except his own conscience?

Did everybody have a conscience? Romilly wondered. The frequenters of the hotel—that is, the drinking element *simpliciter*—represented an achieved average of the accepted thing; what could be done was right to be done. But in a more responsible context most people were so influenced by a blend of common sense and habits, fears, standards of taste, and suffered generally from such a lack of enterprise and originality, that they behaved, so to speak, conscientiously. They did the work of their lives more or less well and steadily. But if the placid nature of any one of them was upset by some violence of fear or anger, by any desperate need for action or fear of inertia, then any one of them might act against his conscience, and, having done so once, might find it easy to do so again.

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Romilly's further meditation, as to whether conscience was an absolute or a variable, or even a name for something that did not exist, was interrupted, appropriately enough, by the arrival of Armiger. Armiger was not of a type to ask permission before making an approach, and Romilly, for all his depression still a human being, did not expect any such request. Indeed, he was glad of a

chance to escape from his thoughts and come down to narrower realities.

The gleam seemed to have vanished from Armiger's eye. In contrast to the enthusiast of the morning, whose case was necessarily an extreme one, the objector at six o'clock—that period of emotional twilight—looked more like a man who seriously needed legal advice and was prepared to ask for it.

After one or two platitudes he sat down and came to the point.

"Will you tell me, Mr. Romilly; what can that man do to me?"

Romilly relaxed into a genial bearishness.

"What can he do to you? That's an improvement. This morning you were thinking what you could do to him. In the wisdom of evening you are asking what he can do to you."

"Well, sir, that's what I'm asking you."

The other noticed the tact and restraint, at once out of character, yet truer to the real patience and endurance of the man, and decided that he had not been wrong in helping him. Perhaps there was something in Armiger of Romilly when young. The suggestion hurt and attracted the older man. His other thought was that Armiger was not in need of any sentiment if any question were to arise of profiting from his misfortunes. He replied:

"The Judge can do one of two things to you. He can apply to the High Court for you to be committed for contempt; and if they made an order you would have to stay in gaol until they decided that you had purged your contempt. The procedure is very tricky, and would probably involve you in having to apologize pretty humbly to both courts and having your apology accepted by at least one—I might even say by both."

The speaker paused, as if ordering his thoughts; then, waving aside an interruption, continued:

"The other, and easier, procedure, would be to prosecute you for assault in front of local magistrates, who, being his colleagues, would probably convict you and send you to gaol for a few months. But I think I have

nipped that in the bud for you. I had a word with the Chief Constable on the way up, and I pointed out to him that, though a prosecution for assault could be conducted without the evidence of Judge Gosling, it was open to the defence to call him as a witness. And he wouldn't like that."

"Not if you were to cross-examine him," put in Armiger, who was visibly impressed.

"Not," corrected Romilly, "if I were briefed for you, and called him, and examined him. I wouldn't be able to cross-examine him; but my scope might not be easy to restrict."

"You think, then, that he won't prosecute me for assault?"

"I have reason to believe that at this moment the Chief Constable is with him, indicating the difficulties should he adopt that course."

"And what about the Divisional Court?"

"Well, you can't do anything about that. It's an awkward procedure. If he decides to go on with it, you've simply got to hope for the best."

Romilly was thinking, but could not say, that it was a pity (and yet not unlucky) that he had mentioned it that morning, putting the idea into the Judge's head. He was thinking that it wasn't necessary to tell Armiger that an application of this type to the High Court had to be made pretty quickly, if at all. It might be as well for Armiger to stay about the place, on tenterhooks for a while. ("To test his conscience," he reflected grimly.)

Armiger's next remark seemed almost telepathically determined.

"I suppose I'd better stay in this place for a bit? Besides, I want to appeal. Can you help me about an appeal, Mr. Romilly? I can get a solicitor to brief you, and I can manage to find a fee."

"Why me?" replied the other, as it seemed unnecessarily, but not unsubtly. Reasons for maintaining contact with Armiger existed, if only professional ones; but it was important to keep him at a distance.

Armiger's answer was unembarrassed and disarming.

"I've got a great respect for you. You're not afraid of anyone."

Romilly's conscience (the existence of which the pleader in him did not admit) came near to smiting him.

"Well, that's good of you, though I think you exaggerate. I hope you exaggerate. But I don't know that I can help you. I am a bit tied up on the circuit; and the Appellate Tribunal may sit in town. However, I can always fix something with one of my colleagues—you know Mr. Hewitson, perhaps—but more important than that, do you think you're wise to spend your money on an appeal?"

"Don't you, sir?"

"Well, suppose you succeeded in getting what amounts to a fresh hearing, do you think you can satisfy a court that your objection is based on genuine conscience?" Seeing the other's hesitation: "Don't misunderstand me. You may have a conscientious objection to satisfying, by your conduct, what you may regard as the imbecilities of a far-too-long Parliament, or a Rumpish assembly: just as I have conscientious objection to advising clients to waste their money after solicitors have ruined their cases for them—though I confess my conscience is elastic."

He waved aside a possible interruption as Armiger got ready to speak.

"The short point is this: that, by the practice of the Tribunals, it seems to be settled that conscientious objection is taken seriously only when it's a conscientious objection to killing, under any circumstances—which may be an objection to killing, and which may extend to an objection to doing any work that, in any degree, directly facilitates killing. Is your objection of that type?"

Armiger's mind was clarifying itself a little.

"I've got a conscientious objection to killing the victims of blunders and crimes, and to encouraging the getting killed of my own fellow-citizens who are similar victims. You, being a Conservative, will not agree with me."

Romilly did not stop to explain the subtleties of his own Liberalism, which is almost as out of place in the present world as conscientious objection.

"My dear fellow, I'm smoking cigars now in anticipation of the time when I'll be Commissar of Justice—or Injustice—for all the English Soviets. But your objection—which I won't argue now—will be hard to maintain as conscientious objection within the meaning of the Act. You're just not pacifistic enough."

With Romilly, Armiger was not on the defensive. He conceded Romilly's point in his reply.

"Every Communist is a Pacifist in a capitalist war."

The other took advantage of the concession, though less harshly than Judge Gosling had done. He was in didactic mood.

"Precisely. I quite accept your proposition. But that's not conscientious objection. As I understand it, the existence of an independent dictate of conscience has no place in the form of modern economism which you call Communism. You only admit the possibility and validity of conscience when, as a result of class war and a dialectical conflict, within or without the personality, your mind happens to speak as the mouthpiece of a certain trend in economic history. Obviously, that is different from a masochistic desire to turn the other cheek, and obviously it is different from the conscientious dictate to the same end which Christians preach and never practise. If any conscience is involved in your case (which is doubtful), it is probably not a conscience that pronounces in the required way. That does not alter the fact that you didn't get a fair hearing; but it does suggest that if you got a fair hearing your application would probably fail. At least, a muddle-headed, but fair-minded, tribunal might come to the conclusion that you would be doing no harm to your conscience by doing ancillary war work. That would be a typical compromise."

Armiger suppressed his desire to argue. He had conceded too much. He felt as Thrasy machus might have felt towards Socrates had the former been dependent on the latter for some practical assistance. Romilly was not glibly speaking from the somewhat platonic standpoint adopted by the exponent of any legal system who assumes

that his system is permanent. Romilly, to do him justice, was under no illusions as to the order he was thought to represent. He realized that the unsophisticated metaphysic of the Communists, all too easy to destroy in dialectical argument, corresponded to fundamental changes in the world-attitude of masses of people, and, consequently, corresponded to new and important facts to be faced by any theorist of law and politics. Nevertheless, it was his duty to give legal advice within the four corners of the legal system about which the advice was being sought. Further, he was conscious of trying an experiment. He wished to discover, from Armiger's reactions, in words and conduct, whether the latter was just a common-sensical scientist, with the scientist's clarity, the scientist's dogmatic limits, and the scientist's resignation to the inevitable, or whether he was a fanatic, whether profound or superficial, and unlikely to acquiesce, immediately or ultimately, in an order of things that defied him to revolt. He was beginning to think that Armiger was only a man of the type *moyen sensuel*, and he was conscious of disappointment. For many reasons (some of which did no credit to conventional standards of honesty) he piously hoped that he was wrong.

But Armiger was now not arguing.

"I don't agree with your political theory, Mr. Romilly; but even if you're right, I'd still like to try an appeal."

"The second point, then, for you to consider," proceeded Romilly, "is that this will be an appeal. I want you to remember that word. An appeal is different from an original application. Appeals are difficult at the best. The business of an Appellate Tribunal—of any sort—is to make appeals difficult—not easy. Because if they allowed too many appeals the lower courts would lose any prestige they've got. In particular, you'll find that no Appellate Tribunal will disturb—and few have power to disturb—a finding of fact by a Judge or Tribunal who saw the witnesses in the first instance. Judge Gosling is particularly good at finding facts so clearly as facts that he is terribly hard to upset on appeal."

"But the malice of the man."

"Forget that," said Romilly sharply. A new, and specific, legal point having been taken, his tone was matter-of-fact and incisive. "No Appeal Tribunal ever contemplates the bad faith of a Judge. If there's bad faith, there is machinery to upset the Judge—prerogative writs, for example—but unless you're prepared to spend hundreds of pounds in order to obtain the services of highly temperamental Silks, please don't mention the words 'bad faith'. If, however, you wish to appeal in the ordinary way, do what I suggest. First, instruct a solicitor. Then, you'd better stay a few days here, and we can go into things. It will be necessary to draw up a notice of appeal, get a transcript of the proceedings, and study it to see whether you have anything to go on or not. Meanwhile I offer you nothing except blood and sweat and considerable expenditure of your hard-earned cash."

Armiger digested this and indicated that he would follow the advice. As an afterthought:

"Would it help me if the old bird died?"

"More telepathy," thought Romilly; "or perhaps he is a fanatic, after all"; but he answered the question dispassionately.

"I don't see how. It might help the Appellate Tribunal to find that the Judge was a sick man at the time, and perhaps not steady in his judgment. But I wouldn't gamble on it. You're not bumping him off by way of appeal, are you? It's not the best procedure."

"It's the Russian procedure."

"On the other hand," goaded Romilly, "nobody invokes law and order more vigorously than your Communist."

Armiger looked sinisterly for a moment, and then grinned.

"No. I'm too contemptuous of him to kill him. You've got to be fond of somebody to kill them—or else so indignant and outraged that there's no alternative. All I feel now is 'contempt of court'—which is what we've been discussing."

As he listened, Romilly realized that the man was much

"My dear Chief Constable, we can't let pass an insult to the Bench. The fellow must be made to apologize."

The Chief Constable realized that he had made his point.

"Well, you have your remedy, sir. If you wish for an apology, I can probably get it for you. Have you thought of mentioning the matter to Mr. Romilly?"

The Judge knew several reasons why he could not approach Romilly; and became, for once, conscious that his methods in the past had cost him much of the friendship that would now have been a comfort to him. Despairingly he said, "I'll have to leave it to you, Chief Constable." Then, the gall reasserting itself, "I must have a public apology of a convincing character."

The Chief Constable indicated his assent, and, with an effort, swallowed his disgust. He knew quite well that he wouldn't get it, and that the Judge didn't deserve it.

Said Sir Charles, with a view to making the judge uncomfortable: "I trust, Chief Constable, that Judge Gosling has adequate police protection. I insist on that. We value Judge Gosling."

As they left, Judge Gosling felt that people were treading on his already dug grave.

3

INQUEST BEFORE DEATH

ESCAPED from Armiger, but threatened with the renewal of his previous depressing meditation, Romilly stretched himself and made his way to his room. There he gave himself a dose of adrenalin—and, feeling a little relieved, went along to a private room where a few of his colleagues were entertaining Sir Horace Harwood, the Judge of Assize, who was about to commence the judicial itinerary of the West Midland Circuit.

Here, for once, the conversation was given coherence by a specific incident. Instead of the fishing-pool of pre-

ferment, influence and speculation, in which the anglers fished with big names of law and politics, throwing back anything less than a very heavy Silk as unconsumable even with the sauce of salacity, now a livelier stream was flowing: and a much lesser creature was being watched from the bank as it hurtled towards the conversational rapids. The absent Judge Gosling was conspicuous by his presence.

As he entered, Romilly recognized the figure and voice of Frank Hewitson, one of his more aggressive and successful colleagues. A younger man than Romilly, slim and dark, with the hawk-like nose and deep-set eyes that promise forensic success, and the exceedingly high wing collar which symbolizes that ambition is, determinedly and successfully, "taking off", this rising junior (no junior is ever suspected of having completely risen) was leading the conversational party along the bank. By virtue of most recent experience, his listeners were treating him as best evidence on the subject, and he was giving it. For had he not, two or three days before, been craving an Appeal to Judge Gosling—in that Protean person's capacity of Chairman of Magistrates for the Borough of Daneford—to establish the paternity of a reaped wild oat? The Judge, incidentally, whatever his forensic defects, possessed full measure of the avarice that the law so often engenders in a man, and while drawing £2,000 per annum for "unconscientious assertion", continued to draw an equal emolument as County Court Judge; also whatever perquisites and benefits attached to the chairmanship of the magisterial Bench. That, however, was not the burden of Hewitson's indictment.

"He sat up there with the horrific expression of the Mikado, as if his Ko Ko income wasn't sufficient to buy him an indigestion tablet; and he had my client where he wanted her."

"Better for you if he had," interrupted the Clerk of Assize, a gaunt elderly man, whom the ministrations of ambitious juniors always reduced early in the evening to a more sympathetic attitude than was his normal when distributing legal aids.

Encouraged by the bibulous interruption, Hewitson, who had the moderate actor's propensity for mimicry, and, incidentally, the moderate actor's forensic personality, proceeded to give a mimetic presentation of Judge Gosling's ungooselike ingenuity in misinterpreting ambiguous facts to the detriment of the litigant. The female appellant appeared to Romilly, listening and reflecting, to have been a whetstone for the technique that had proved so effective against the conscientious objector.

"Did you complain to your mother when he behaved like this?"

"You didn't complain? You say you were ashamed to complain? You say you didn't complain although this serious thing had happened to you? You're quite sure you didn't complain?"

"He writes this all down, as if it mattered tremendously.

"But the second time you did complain?"

"You told somebody what had happened?"

"Weren't you ashamed?"

"Are you telling the Court that you found yourself able to reveal these intimate details of your conduct to anybody? You astonish me."

"But I complained—and I continue to complain," finished Hewitson, "because with that kind of argument he succeeds in finding my witness unreliable and makes a pure (but quite untrue) finding of fact against me. And he does the same kind of thing regularly in the County Court, finding facts, and working on the demeanour of witnesses, so that nobody can possibly appeal against him. And in my case he makes his finding on the merits (that was my fault for producing every conceivable bit of corroboration), so that I can't very well issue another summons. In any case, he'd be on the Appeal Bench again. However, I'm instructed to try."

"You're the dog that caught the electric hare."

"Can't you get him off the Bench for that hearing?"

"He doesn't understand objections to the jurisdiction."

"You might certiorarize him," murmured Sir Horace.

"But I suppose you haven't got the money."

"No; so that, in fine, the only chance of protection for

the women and maidens, to say nothing of the illegitimates and the orphans, of this parish is for Romilly's conscientious objector to bump the old devil off, as he's promised."

"Any chance of his doing it, Romilly?"

"I sincerely hope so, because I have very subtly touted the brief for the defence. I don't know whether he's fanatical enough for the job. If it comes off I'll get you a brief with me, Hewitson."

"Then we had better take him in hand and give him lessons in how to murder without failing to get caught."

"It's a remarkable thing," commented Sir Horace Harwood, "that no litigant seems to have realized that the only way to cope with the unappealability of a County Court Judge on the facts is to liquidate the gentleman in question. Of course," he added, reflectively, "it would have to be done before he made his finding, because the judgment would stand if completed. And I suppose that litigants are too optimistic to realize the worst before it happens."

"Any precedent, Judge?"

"No. Common law Judges were murdered occasionally in the good old days. But your County Court Judge is a creature of statute. You can't murder a creature of statute. It murders you instead."

"If done, it should be done by counsel," said Romilly. "Some old and crusted junior like myself who finds his declining years embittered by having to listen for five, or seven, and one, to the cynical perversions of justice that one has to listen to, when one would rather listen to them in the High Court for twenty and one."

"I hope," said Sir Horace, noting the astringency, "that I shall be spared the embarrassment of trying you for the murder of a County Court Judge, Romilly."

"I'd love to charge him," said the Clerk of Assize, gazing with watery eye into the middle distance. "How say you, Alfred Romilly? Are you Guilty . . .?"

"I'll defend you," put in a listening Silk, "for two hundred and fifty, and two."

With the announcement of dinner and the intrusion of more pleasantly personal banter the atmosphere became mellow and the criticism less astringent.

"After all," said the Silk, "somebody must like Judge Gosling. Sitting as County Court Judge, or Matrimonial Magistrate, he always has to send one litigant away satisfied, though he must have some difficulty in deciding which of them he likes least."

"County Court Judges," propounded Sir Horace, "are all descended, with or without the mediation of the bar sinister, from Buredan's Ass. At some stage they've got to decide which bale of hay to attack." He turned to Hewitson. "What solved your particular Judge's problem of volition?"

"Oh, there was a clear determinant in my case. The respondent was unrepresented by counsel (although he had obviously consulted that taproom solicitor). The appellant, on the other hand, was represented by myself. Obviously the bales of hay were loaded. It was much more desirable to be offensive to two people than to be offensive to one; and he chewed at us accordingly."

"And now the atmosphere is so tense that we are all waiting for somebody to take a pot at this elderly goose, knowing it'll come, and not knowing when, just like the explosion of a time-bomb."

"That being so, the problem for counsel is to be available without being a witness or an accused person."

The Judge's Marshal, a young barrister named Roper whose listless manner concealed a flair for news, volunteered some information.

"There's plenty of talent available without counsel. In this very hotel Gosling has been offensive to every member of the staff and generous to none. The management are blackmailed by him into sycophancy, because, as Chairman of Licensing Sessions, he can do them all the harm he wants. In addition, the conscientious objector, who seems to have plenty of money, is also staying in the hotel. I saw him booking himself in for a long stay."

"On my advice," murmured Romilly. "I hope the police don't give him different accommodation."

"I'll tell you something better than that," said Hewitson. "The father of my applicant for separation and maintenance (the girl's father, that is—a man with the appropriate name of 'Withers') happens to be the floor-waiter on Judge Gosling's floor. She was the kitchenmaid here (she's had the sack since). The respondent," he added, as if by afterthought, "was and is our hotel 'boots'."

Enjoyment of the sensation which this announcement created was interrupted and intensified by the further contribution of Roper, who seemed to have been specializing, since his arrival, in the legal problems that appeared to arise out of and in the course of the business of the Dragon Hotel, and the discussion of which, incidentally, constituted one of the important amenities of the saloon bar.

"I gather, further," volunteered Roper, "that when the hotel carpenter recently fell downstairs Gosling awarded him no compensation, because he found a presumption that a hotel carpenter falling downstairs at the end of licensing hours was drunk."

"That," said Sir Horace Harwood, "is a finding of law. From what I hear, I imagine that it was Judge Gosling's only recent contribution to legal theory."

Hewitson addressed himself to the Marshal with the conventional courtesies that circuit messes show to these judicial ancillaries.

"For your information, Marshal, by this time on Wednesday, the hotel receptionist, who lives on the top floor of the building, and is not a bad-looking girl, is likely to have quite as good a reason for doing a little mischief to our Gosling as any of your waiters, kitchen-maids, carpenters, conscientious objectors, or what you will. She has been unwise enough to ask him for a separation order against her husband, a man named Healey, also staying in the hotel. You can take that clause for granted, incidentally; everybody lives here. This Helen Davenport (that's her maiden name), who is probably a bit of a shrew, has a goodish case on cruelty, which she has spoiled by briefing your humble servant when she might have briefed Romilly, for whom Gosling

has some respect these days. However, come to the County Court on Wednesday. We are part heard. We'll be thrown out before lunch. The present position is that the Judge is very elastic on husbands' rights. Everything that Healey has done appears, so far, to be legitimate husbandry. Moreover, the Judge has completely taken over the defence from Twemlow, managing clerk to Mainchance's, one of our ambulance chasers"—Hewitson was being a bit uncharitable to an old client—"and is alleging an unpleaded plea of desertion against us. Whatever we did was the nagging of an ill-tempered wife. Before we left, why didn't we leave? It can't have been serious. When we left, what right had we to leave? I ventured to remind him of the decision in Sickert and Sickert, by which, if you force me to leave you, you're the deserter; and he said that that was a case about artists, who notoriously behave differently.

"I was pleased with that one," added Hewitson; "I think Gosling's an artist."

"What we're interested in," suggested a listener, "is whether somebody's going to get hanged for reducing him to still life."

"Healey'll protect him."

"Not necessarily. He did Healey a good turn domestically, but he's also refused his discharge from bankruptcy."

"Then his only friend is the 'boots'."

"Who, incidentally, stooges a little and snoops a little, possibly for Healey; and does a little touting for Twemlow."

"Nice work."

"Wonder they haven't sacked that fellow."

"Labour problems, my dear chap."

"Well, he was the hero of an affiliation case, wasn't he?"

This bad joke broke up the conversation.

But the series of revelations had created an impression. Somebody mentioned that Gosling had probably secured police protection, but everybody in that group knew that

police protection in England means that the police promise you that they will catch the man who kills you rather than they will prevent you from being killed. Indeed, during the next few weeks the air was destined to be loud with the slamming of doors to empty stables.

While the Bar was discussing the merits and demerits of any antagonism that was entertained by anybody, a kindly detective-inspector was endeavouring to suggest, almost apologetically, to Armiger that he should apologize to Judge Gosling. He did not find Armiger in any fanatical mood. But he received a categorical refusal to do more than express the man's regret for his violence.

"Be courageous," suggested the policeman, unwisely.

"Be courageous—and grovel—is that what you mean? I won't humiliate myself so that that old humbug can crow over me—or is it quack?"

"Quite right, old man," murmured the inspector as inaudibly as he could, and reported accordingly.

The belief that the police were mounting guard over this particular stable was confirmed for Romilly when, towards midnight, Major Cartwright, the large, genial and surprisingly shrewd Chief Constable of Daneford, joined him in the lounge.

Romilly was deep in Armiger's copy of Osler, and was meditating some very interesting data, as the Chief engaged him in conversation. He had just confirmed that insulin was not chemically synthesisable: nor were the extracts of other ductless glands.

"Your advice came in very handily, Mr. Romilly."

"Don't mention it, Chief."

"Know any authority on book-throwing?"

One half of Romilly's mind went on with its calculations, but his tongue-control answered: "Somebody once threw a book at Winston Churchill in the House of Commons."

"What happened? Did he read it?"

"Probably wrote it."

By this time Romilly had arrived at a conclusion, and put the book down prepared to hear what he could hear.

For reasons of his own, he put the book where the Chief Constable could see the title.

"Osler, I observe."

"Yes, reading medicine is a form of masochism with me."

The Chief could not possibly know how true that was: that Romilly, once interested in the sciences, now, like many other imperfectly successful barristers, brooded constantly on the thought that a great medical man (and who doubts that, given the training, he could be a great medical man?) is clearly greater than a great lawyer—and certainly happier. A happy man lives with his subject. If a lawyer's mind is on his subject, he goes about life thinking in terms of social relations that are not permanent, thinking in a context where the only stable factor is wealth—thinking about money, in fact; whereas the scientist who is interested in his subject goes about reflecting on the human body and brain, a wider, more stable domain, and a bigger area than the human pocket.

The Chief Constable's mind was on his subject, and reacted (for his listener) most instructively.

"I don't like blood much myself, but a poisoning is always very interesting."

"Interesting to the Bar, too. The Attorney-General prosecutes, and everybody gets very well 'marked'."

The Chief proceeded along the line of thought which Romilly wanted to know he was following.

"Do you anticipate having to defend that man . . . free of charge?" This tactfully.

A little surprised that the Chief Constable knew of the incident ("Who told him?" he wondered) Romilly skirted the question.

"I see I've been overheard. But my instincts seem to have been quite sound. If he comes to me to defend him (on, say, the killing of Judge Gosling), I won't be defending him for the murder of Judge Gosling—but against a charge of murder. That's different. Because if he wants to go into the witness-box and deny his guilt

he'll have to tell me that he's innocent (I can't connive at perjury, you see). That means that I'll be justified in charging him a fee. All I promised was to defend him free of charge if he murdered Judge Gosling."

"Nicely argued," commented the Chief appreciatively.

"Do you think he'll do anything?"

Now Romilly was putting the question.

"Well, the Judge wants to proceed against him. And, for all our efforts, he may still do so. That may make the man desperate. We did try to get him to apologize; but he won't apologize as humbly and abjectly as Gosling requires; and I can't say I blame him. As a matter of fact, I can't understand a fellow with that amount of spunk falling for that Communist-Pacifist line of talk."

Romilly wriggled uncomfortably. He knew far too much about political philosophy to hope to be able to explain to the gallant Major that Communism was one thing and Pacifism another; and that conscience moved in a different plane, and was not necessarily clear-headed. Once again, accordingly, he found escape from intellectual problems into practicality.

"Don't you think his Pacifism will stop him from doing any harm?"

"Well, as far as I'm concerned, he looks courageous enough to do a spot of no-good. So we're looking after things."

"He isn't the only potential doer of no-good, is he? I understand that nobody in the hotel would have difficulty in finding a grudge against our mutual enemy—shall I say?—and more than one would like him out of the way."

The Chief was guileless.

"You are talking about Lumley, of course."

"And others."

It was common knowledge that Lumley needed Gosling's proxy for his own purposes, and was much more likely to get it from Gosling's executors than from the Judge himself.

"You may take it," said the Chief Constable, "that Armiger's favourite. He alone has got the guts."

He rose laboriously, and as he rose glanced at the book on the table.

"Rather interesting that the book he threw was Osler."

"So you knew that. But, anyway, he had it before the trouble started."

"For your information, Mr. Romilly," said the Chief, leaning towards him with mock solemnity, "he's keeping an eye on the Judge, and we're keeping an eye on him. The food is being examined. The only real appearance of criminality—as a policeman I can say this—is that he's engaging my police in conversation."

"I'll have to warn him about that," thought Romilly. Aloud he remarked, "You know, Chief Constable, I once took statistics of crime and conviction in England, and what do you think I found was the crime for which most convicts were convicted?"

"I'll buy it."

"Making statements to the police."

In another part of the hotel, Sir Charles Lumley was closeted with one of his most useful "clients"—in the Roman sense. There was a certain parallelism between them—between the successful polish of the heavily built one and the less successful polish of the other. The Boss and the Traveller. To say that Lumley confided in Healey would be too much. In fact, what he was now doing was trying to prevent this "client" from telling him too much. He could not allow the latter to trade on the fact that Judge Gosling, in an almost conscientious moment, was being instrumental in depriving him from an important chairmanship.

"The Judge," said Sir Charles, in the determined and pompous tone of one who is prevaricating and knows that the other knows it, "the Judge is an excellent man. An ornament to the county and to the County Court Bench. The fact that he has treated you badly in your bankruptcy would no more justify you in aligning yourself against him than would my own personal differences with him justify me."

Sir Charles was using just that degree of honesty that makes real dishonesty possible.

"Besides," he added, "why spoil your position? Everybody thinks that you're grateful to the Judge because he's likely to refuse to make an order in favour of your wife."

Healey saw the point and grunted assent, a clean nose being more important than a clear conscience.

"Then again," proceeded the M.P., "he is a sick man—a diabetic, you know. The array of bottles that I saw in his room would fascinate you. Didn't you once travel for some chemists?"

"Homer and Meredith," punctured the other, with commercial traveller's pride.

"Anyway, he won't last forever. You'll get your discharge, one of these days. But don't let your loyalty to me, or your own feelings, give you the wrong attitude to this conscientious objector. We neither of us approve of conscientious objectors."

He paused, perhaps to reflect that in the last war Healey had achieved a temporary prosperity as a Quartermaster on active service in Yorkshire, while himself had made the contacts in America which eventually enabled him to qualify for a knighthood by playing catspaw to a king of finance in the praiseworthy enterprise of rearming Germany.

"We don't like conscientious objectors. We've had enough of them." Then, as if conscious of ingratitude to a defunct patriot, he referred to a living one. "Where would the country be if Winston Churchill had been a conscientious objector? We must not make the mistake of tolerating the lack of patriotism and the insubordination that that fellow showed to-day. We're not here to play policemen; but if anything happens, we know where our sympathies lie."

The speaker and his interlocutor applied themselves to their glasses reflectively.

"And," added the M.P., "I don't trust Romilly."

A remark that would have amused that gentleman very much, had he been privileged to hear it.

"So keep your eyes open, Healey—I don't mean now," the M.P. added charmingly, as Healey guiltily suppressed a yawn. "I mean in general, and I think you know what I mean when I say 'Keep your ears open too'. A man can keep his nose clean and close to the ground."

Healey looked reflectively at his boots. Each knew what the other meant; and before adjourning they made oblation in whisky to the special kind of loyalty that modern England has been pleased to reward.

4

EXCURSIONS WITHOUT ALARUMS

DURING the opening week of Assizes, and while Judge Gosling, in various capacities, continued to sit, the atmosphere of the Dragon Hotel remained tragic but not serious. Three or four of the sojourners in the hotel inquisitively and cheerfully awaited the demise of Judge Gosling as people have been known to await the opening of a Second Front. Romilly, in particular, felt as a good chess player feels when, in moments of idleness, he watches an easy end game in which choices are limited and the result is inevitable, but bad players contrive to introduce variety and delay. In such circumstances there is a strong temptation to interfere.

For days rumours were propagated extensively by all and sundry. It was said that a man in thick boots and a muffler, wearing a suspiciously proletarian cap of ugly design, had been arrested by the police in the precincts of the Town Hall with a revolver and jemmy secreted about his person. The story (invented as model rumour) bore a distinct flavour of Russian snow, but it was readily believed. Rumour had it, too, that the Judge's milk had been snatched from his hand by a watchful policeman, and, being taken away and analysed, was found to contain a high percentage of veronal. Needless to say, the corridors of the hotel, a rambling building, were reputed

to be densely thronged with lurking figures and watchful policemen, all equally imperceptible to the naked eye.

The lay-out of the hotel, and the surrounding circumstances, were congenial to these rumours and favoured the existence of an ingredient of truth in them. Judge Gosling occupied a suite of rooms on the first floor of the hotel, including a bed-sitting room and a study—spacious rooms, well furnished with hangings, and with more than their normal complement of doors. Adjoining the bed-sitting room, and connected with it by a door, was Romilly's room, which also looked out on a common balcony. On the other side of Romilly's room was Sir Horace Harwood's suite, which was flanked in turn by rooms occupied by miscellaneous members of the Bar. At least six windows gave access to the balcony; and an enterprising house-breaker might also have found considerable resources in the many intervening doors, most of which would have been locked had anybody been in possession of the appropriate keys. Romilly was thus in the happy position of having access to two different Judges, or at least the capacity to disturb both of them with his snores, whereas his existence saved them from each other, to the advantage of at least one of them.

On the floor above, the bedrooms were occupied by barristers, by Armiger, by Healey, by Sir Charles Lumley, and by any other visitor who happened to add quantity (he could not add quality) to an assortment rare even in hotels.

The third, and garret, floor was largely occupied by the staff. Any class distinction, or any degree of separation that might be inferred from the arrangement of occupants into strata, was offset by the fact that the hotel was laced with a web of staircases, opening not only off the main corridors, but also off the corridors that ran into the main corridor. One of these subsidiary corridors ran along a side of Judge Gosling's suite; and one of the many doors of the suite opened on to it. Another corridor debouched in front of its main entrance. For games like hide and seek the pattern of the hotel afforded ideal facilities. A dispassionate observer, however, might have

sensed the feeling that any games that were to be played in this *milieu* were likely to be less childlike than ordinary hide and seek, just as the parlour games of childhood become different when played outside the nursery and by adults.

During Tuesday (the day following the sitting of the Conscientious Objector's Tribunal) the hotel was reasonably empty. Romilly was at the Assizes, Armiger was at work, Judge Gosling was presiding over some court or other. In the hotel the only activity that might have been observed was an encounter, outside the Judge's room, between two excessively sleek men, illustrative of different species of sleekness. The older, stouter man, who might have been coming from anywhere when the other saw him—even, possibly, from inside one of the rooms—would have been easily recognized as Healey, still immaculate, but showing a little of that rubbing on the glaze which distinguishes the inebriate in the afternoon from the inebriate at night. The other, who would have been recognized by Hewitson as the hotel "boots", out of uniform, was also immaculate in a younger, thinner, cheaper and, if possible, more repulsive style. Ten years younger than the other, he had not yet graduated from the mainly amorous level of experience to the mainly bibulous. The thin, mercenary face with the cunning eyes and the receding forehead streamlined in thin, coarse, brilliantined hair, seemed to be balanced by those pointed shoes that indicate the neat-dancing sensualist; which is the pose of the shallower youth among the *bourgeoisie*—and their proletarian mimics—along lines fashioned by the kings of the screen. In fifteen years time, given some economic chances, this one would possibly achieve the slightly bloated poise, and the flair for whisky, that characterized the man he was now talking to. Romilly would have searched them both for a conscience without much prospect of success.

Said the older man to the younger: "Been keeping an eye open, son?"

The question prevented any interrogation by the other

as to the questioner's movements. Williamson knew that this was a man whom servants either loathe or delight to honour. Williamson knew enough to fancy him as a patron. Deferentially, but not without a touch of insolence in order to show his equality:

"Want me to keep an eye on your good lady, sir? Leave it to me."

A few coins changed hands. But Healey knew enough to keep the initiative.

"What did you find in the Conshy's room?"

Williamson paled a little, but the question was too fast to be evaded.

"Only a German book. . . ."

"Give it me," said Healey firmly.

Williamson went away and returned with it.

When later Healey showed it to Lumley, the latter, who knew German well enough—too well in fact—said:

"Stick to it. It's only a book on the endocrine glands."

Healey was very disappointed.

On Tuesday evening, Romilly, in answer to a note sent to him by Judge Gosling, entered, through an inner door, into the latter's room. The Judge had not yet arrived; and Romilly waited for him a little impatiently, alternately sitting in the Judge's armchair and prowling around. In the course of his prowls he observed carefully the Judge's array of medicines, the sight of which reminded him, unhappily, of the days when he had desired to be a scientist, and the years which, he could not deny to himself, would have been better spent in the pursuit of a science than in waiting for briefs. But it was too late to do anything about that now—or was it? By various associations of ideas his mind was conveyed back to Judge Gosling, the hope of his speedy demise and the unhappiness that he had already caused during his existence. He thought of a cryptic verse in Proverbs; that it is better to say of a man that he is already dead, than to say that he still lives.

Romilly's aversion to Judge Gosling was not exclu-

sively accounted for by the distress that the Judge had caused to more than one of Romilly's clients. There was a more personal hostility, going back beyond the legal memory of most of his colleagues. Forgotten now by all but the Judge and Romilly, there was an old feud between the two dating from an ancient County Court. Romilly had been struggling against an impudent claim which Judge Gosling was inclined to favour.

"Never in my experience . . ." the young, uncynical, Romilly had been unwise enough to say.

Gosling had been cad enough to seize the opening.

"It's evident that you haven't had a very extensive experience."

"Not of Judges as discourteous as you are," had replied the ready Romilly, with the wit and confidence of youth, and a fire not yet damped through idleness and want of fuel.

But the reply, meritorious as any of the good, prepared, impromptus of the more famous, had not established his reputation—only lost the case, caused Judge Gosling repeatedly to be rude to him, and caused solicitors and fellow-barristers—and (more important) their clerks—to say that Romilly was bad in court—alienated Judges.

A similar mischance would not have befallen a better-connected man. Nor would a second-rate man have thought of, or ventured, the play of wit. Nor would a narrow, success-seeking advocate like Hewitson. The big mistakes are made by the bigger minds—the Lucifers impatient of their orbits.

Romilly's consequent years of ill-success he blamed first on himself, later on Gosling, later still on Gosling as the manifestation of all his own weaknesses and faults—and of all the worst features of a far from perfect profession.

Some of these recollections and reflections, passing through Romilly's mind, were interrupted by the entry of the Judge, accompanied by Sir Charles Lumley. Away from the Bench, Gosling appeared less formidable, a trifle pathetic, but still predominantly unpleasant. He reminded Romilly of the suggestion of cynical senility that lurked in the entire hotel. He was "physiologically"

unpleasant. His opening words, which took Romilly's mind off his thoughts, were a mixture of courtesy and arrogance.

"Good of you to come, Romilly. Sit down. Sit down, Sir Charles. Have a glass of sherry. . . . Incidentally, Romilly, you misled me when I was sitting on the Tribunal yesterday."

He now sat on the bed.

"Misled you, Judge? You're not an easy man to mislead."

"You misled me by saying that I had two remedies open against that young hooligan, when I had a third. Could I not, in my capacity as magistrate—which, as you know, functions always—have immediately arrested the man, because of, or to stop, a breach of the peace then and there committed?"

Romilly sighed patiently and heavily. He was not there to be courteous. He fixed his eyes on a cellarette of bottles and pronounced.

"You could, Judge. And when I said that you could proceed against him for the assault, I did not conceal that. Nor did I conceal it when I said that you had no power in your capacity as Tribunal to arrest him. But if you are suggesting that I, being under a duty of full disclosure (as *amicus curiæ*), concealed from you a material possibility, if I may use the expression, then the answer is that I did not contemplate, and did not think that you contemplated, the absurdity (there is no other word) of a magistrate who is also complainant exercising his powers in order to arrest the respondent to his complaint. If you really wanted to do that, then I misled you; and, incidentally, saved your dignity."

The reply was too strong to allow of further complaint. The Judge edged away from truculence as unobtrusively as the circumstances permitted.

"Absurdity's a very strong word, Romilly. However, I'm not complaining. The reason I sent for you—and you have been good enough to come—was precisely in connection with the dignity of the court. In a word, have you any influence over that man?"

"In the course of the last twenty-four hours he has asked me for advice. I've given it him. And I think he values my advice."

"Very good advice, too, I feel sure."

Lumley, who had, so far, taken no part in the discussion, murmured an assent which Romilly knew to be as disingenuous as the Judge's courtesy. The Judge proceeded:

"The point is this, Romilly. I have decided to summons this man and proceed against him for the assault. I really don't feel equal to a journey to town to a divisional court. And I would not even pursue my present course if the man put in a convincing apology. For your information, he told Cartwright's man that he was willing to say that he displayed a violence unworthy of a conscientious objector, but not that the violence was unjustified. You appreciate that that does not save the dignity of the Tribunal. It has occurred to Lumley here, and I agree with him, that perhaps you could persuade him to save the dignity of the court by behaving differently."

Gosling had in mind, but could not mention, the dangerous possibilities (indicated by the Chief Constable the previous evening) involved in any defence of the objectionable objector conducted by Romilly. The latter realized and also did not mention the strength of this position. Yet he was not in an explaining mood—he contented himself with a correct refusal.

"I take it, Judge, that you're asking me to ask him to apologize pretty humbly. I really don't know that he'd consent; and, with all respect to you and Lumley, I wouldn't like to take on the task of trying to persuade him against his will."

The Judge pursed his lips, then ventured a hostile question.

"I can't imagine that a counsel of your experience, Romilly, can contemplate the possibility that he was justified in what he did."

The word "experience" was unfortunate.

"My experience isn't as wide as all that, Judge. In fact, as you know, it's pretty narrow. As for his being

justified, I haven't said anything as to that. But, since you ask me, I am not going to say that I don't understand the man's feelings."

The Judge was about to interrupt; but Romilly held up his hand and insisted on continuing: "Please don't misunderstand me. I understand his feelings. I understand that he felt (rightly or wrongly) outraged: I think he feels now that, though he behaved badly, he cannot bring himself to humiliate himself before someone to whom he feels hostile; and may I add to that that in my experience—and in your experience, Judge—it is not wise to hold a man to a course which he regards as humiliation."

The Judge hesitated—then replied quite shortly: "You think he'd rather go to gaol?"

"I feel sure of it."

"Then I think there's nothing more to be said except 'thank you for coming'."

"Not at all," said Romilly.

At this point Lumley felt that he had not taken sufficient part in the conversation.

"Mr. Romilly, with all respect to your legal knowledge, aren't you making a mistake in giving your moral support to this conscientious objector?" He spoke the words "conscientious objector" contemptuously. "The man's an out-and-out Communist of the type that is anxious to overthrow law and order. How can a man in your position sympathize with him or show him kindness?"

"We are all Socialists now, you know, Sir Charles."

"Who said so?"

"Sir William Harcourt in 1895."

Lumley realized that he'd been worsted; and the realization caused him to lose some of the tact and control that the chairmen and intending chairmen of breweries and armament firms regard as among their most cherished possessions.

"Dash it all, man. Where are your brains? The fellow's a traitor. Haven't you got any patriotic instincts? Perhaps you haven't."

Romilly knew how to deal with this kind of rudeness.

"It seems to me, Sir Charles, that Dr. Johnson must have had you in mind when he made his famous pronouncement on patriots. I'll leave Judge Gosling to explain the reference to you. Good night, Judge. Sorry I can't be of more assistance."

As he left, the Judge felt that life might have been pleasanter for him had he been able to make friends like that.

He made no effort to conceal from Lumley the fact that he was laughing at him. But Gosling's humour was not an expression of loving-kindness. He rang a bell, sent for the clerk of his court—a solicitor named Hallam—and spent the rest of the evening so arranging matters that next morning Armiger was to receive a summons to answer, ten days hence, a charge of assault.

The same (Tuesday) evening, and a short time before Romilly entered the Judge's room, a young woman, quietly, but not prudishly dressed, short and slim, far from curveless, with an amusing face, intelligent forehead, humanized by a wide mouth and *retroussé* nose, was walking quite prettily along the corridor that ran alongside Judge Gosling's room. She was carrying a laden tray. Her walk and general demeanour were characterized by the unforward poise that comes to a nice woman from the necessity of constantly dealing with not nice men. This poise, however, was not impossible to disturb; and, as she came round the corner, was disturbed. A collision with a heavily built, whisky-odorous, cigar-smoking man on the wrong side of forty, is difficult enough for any hotel receptionist, and particularly so when, as now, the man concerned happens to be an unwanted husband against whom one is part-heard, and losing, in an unfriendly police court.

To Healey, imperturbable in erotic encounters, the meeting was no shock. Beyond a leering "Good-night, my dear," he essayed no advance. To do him justice his mind was engaged in the practical problem of getting in touch with Williamson quickly so that the latter might

follow her and obtain a little evidence for the morrow. He was also thinking thoughts far removed in purpose from his wife.

She, however, in receipt of a surprise calculated to upset the aplomb of even the best receptionist, had no conception of the innocence of his intentions. So far as she was concerned, she saved herself from the disagreeable possibilities of the encounter only by that agility which is an acquired characteristic among such virtuous females as work in hotels, and of which the possession enables them to survive. She was able to slip round Healey into the corridor fronting Judge Gosling's room, and it was with some loss of *sangfroid* that she arrived at the top of the nearest available staircase. There she all but collided again, this time with none other than Armiger, who was perambulating the upper corridor, and might have seemed, from his manner, to be trampling determinedly over the recumbent form of his enemy, if the latter had only been in his proper place at the time.

The accidental contact, and a common interest that they both knew about, saved introductions, cleared their minds of unpleasantness, and, in the reaction, swept aside any differences that might have inhibited, or misdirected, conversation between male guest and female employee. Instead, Armiger grasped, rescued a tray from, and found himself in conversation with, a young woman who was not only a fellow-creature in distress, but who would appear to be a very desirable companion even if not in distress. That opportunist in every man, which knocks once at every woman's door, was not wanting in Claude Armiger.

"Miss Davenport, I think?" said Armiger, wondering how such a woman came to be employed in such a capacity, and how she came to be the wife of a husband so undesirable that she could not bring herself to use his name.

The tact which he had unconsciously used was as effective as any window-cleaner's.

"Mr. Armiger, I believe," replied the girl, achieving a tonal blend of friendliness and formality.

In her relief she had already forgotten the existence of her husband in the lower corridor, and on a lower level of existence. Here was one with troubles that dwarfed her own. She was already seeing and feeling that humourless earnestness in the manner of Armiger that had attracted, and slightly repelled, Romilly. In her it conjured the sense of sorrow, and the sympathy for someone, right or wrong, that is the surest path to understanding and affection, and perhaps the most misleading. Certainly the atmosphere between them was immediately charged with the mutuality of feeling which is stronger than class feeling, and, if not permanent, at least more lasting than the liaison that commences with a desire for pleasure. Of which desire, incidentally, neither of them was bereft.

The receptionist and typist at a hotel like the Dragon often has to discharge the duties of any member of the staff who happens to be absent; and, ironically, the tray that Helen Davenport was carrying, and of which Armiger politely relieved her, was charged with the milk and biscuits that a chambermaid should have been carrying to the room of Judge Gosling.

By common consent, the tray was put down in the nearest maid's pantry, and they found themselves laughing at the coincidence.

"Escaping from the Judge.—Has he turned amorous?"

"No. Escaping from my unwanted husband; but the food's for the Judge."

"Feeding the hand that bites you."

The girl laughed.

"You've got more against him than I have, and you're a chemist. Couldn't you put some poison in it?"

"Chemists don't poison people; it's too obvious."

"Couldn't you poison him because of that? After all, a chemist wouldn't use poison."

Armiger laughed.

"Double bluff, Lady Macbeth."

Had she seen behind the laughter Helen Davenport might have felt more frightened than amused. But Helen Davenport was not an expert on fanatics. She did not

ask herself whether this was a schemer who proposed to achieve, with her help, a fanatical purpose. She was more interested in her own fate and emotions. The tone of his answer gave her no indication that she was wrong:

"Something might be done."

"What about sugar in his milk? They say he's diabetic."

"He'd taste it, and its not very harmful."

"Is there no tasteless sugar? I once read something in a detective story about . . ."

"You're a woman after my own heart," interrupted Armiger, and, being now in a heroic mood, changed the direction of the conversation by kissing her.

To the girl the gesture was a treaty of alliance which she ratified. They settled down, accordingly, to talk about the Judge. The remainder of the talk was on the sins and harlotries of her husband, and the prospect of a divorce, with implications that took the mind of the girl, though not of the man, away from the facetiously sinister motif of the overture.

To the hotel "boots", Williamson, who, for reasons of his own, always walked quietly, the whispered question and answer "To-morrow night?" "Why not?", heard tantalizingly from the half-darkness of the pantry, were sufficiently interesting and disturbing to cause him to stop and draw in his breath.

To senses heightened by excitement, that noise was enough. With the suspicious nonchalance of the guilty, the two conspirators (in he knew not what human, or inhuman, conspiracy) emerged into the corridor.

The "boots" looked arrogant with the arrogance of the servile, and spoke with all the superciliousness of the ambitious servant. In his dealings with "fellow-servants" he felt the pride and confidence that come from even the most degrading uniform.

"Good evening, Mrs. Healey. A pleasant night."

Armiger did not know how much Williamson had heard, but naturally assumed the worst and acted on it.

"Very nice and quiet for a professional snooper."

The "boots" was not without a kick.

"Quiet enough to make a conscientious objector feel safe." He leered. The unexpectedly bold sally upset Armiger.

With a muttered "Snivelling bastard", he produced his own counter-surprise; and seizing, with unexpected vigour, his *bête noire* "the uniformed sycophant", in a most effective hand-lock, propelled him to the stairs and down them with an appropriately placed kick.

"Lady Macbeth" following the action, first with fear, and then with enthusiasm, forgot herself sufficiently to hurl a pair of boots at the victim.

"Comrades in crime," said Armiger approvingly.

To the retreating "boots" counter-offensive was for many reasons dangerous.

"I'll get even with you, you swine!" was his formula to re-establish his esteem.

But there were circumstances that lent the threat a degree of reality.

The arrival of Romilly in the lower corridor prevented further exchanges, and gave Armiger, who, with Helen, had now descended the stairs, an opportunity of introducing to each other two friends, of both of whom he was quite proud.

"More violence, I observe," commented the barrister.

"I am afraid that was my fault, Mr. Romilly," replied the girl—and her reply, though not intended to do so, gave Romilly a sense of exclusion, a glimpse of a loyalty, the perception of which transformed his solitude into loneliness.

The brooding and the conversation were alike interrupted by the passing along the transverse corridor of two barristers going to bed.

All three of them listened conspiratorially to a conversation being conducted in the loud tones affected by the more assertive members of the junior Bar.

"Queer bird, Romilly," said the voice of Hewitson—"very pedantic. He thinks Shakespeare a Chancery decision, and Keats a probate case."

"As indeed they are," replied the other, who might have been Roper.

The girl, who could not possibly understand the reference, was therefore better able to recognize the mockery. She felt herself blushing and hurt.

Romilly, who knew himself to have escaped into pedantry from greater possibilities, relieved the situation with a *mot*.

"There's nothing I like so much as people talking behind my back in front of my face."

As he departed, he could not know that his courage, rather than his wit, had made a conquest.

On his way to bed he passed a group that resembled nothing so much as Axis satellites, all with different hostilities.

Lumley, fuming, was undecided as to whether he liked least Romilly—the open enemy—or Gosling, the inimical friend.

Healey was listening to Lumley and receiving signals from Williamson. He, too, had many hostilities.

Williamson, also, was in doubt as to which of many he hated most.

Of the three, Healey was the calmest. His pronouncement, when it came, was for subtlety worthy of a better intellect.

"Let's leave it to the conshie. He'll do more than we can."

"Don't leave too much to chance," muttered Lumley, and he was sober enough not to commit himself further.

5

ALERT WITH INCIDENT

ON Wednesday morning Armiger received his summons. The same morning, Romilly, together with Roper, left the Criminal Court, where the former had been prosecuting, and wandered into another room of the Guildhall, where Gosling was sitting as magistrate.

Gosling, as anticipated, was engaged in applying to the case of Helen Davenport a measure of the cynical dis-sympathy and intentional misunderstanding of which Claude Armiger and others had reason to appreciate the quality.

Helen Davenport, neatly dressed, was standing at a dais at the side of the court, where complainants usually stand, showing a pretty figure and an expression of resignation. She was wondering what her next move was to be. Opposite her, Healey was trying not to leer before the decision was finally given. Twemlow, Healey's solicitor, a thin man rather too large to be called 'rat-like', with a Bergerac nose that might have been amusing, had his eyes been less mean and cruel, and whose forehead vaguely suggested Williamson, had just addressed one or two ungrammatical but intelligent sentences to the court, and was watching Hewitson struggling.

Unlike Romilly, Hewitson knew when he was beaten, and at this stage was only protesting mildly.

"You must agree, sir, that the contradicted evidence of drunken habits, and at least one assault, give me all the constituents of cruelty that I need."

He looked at the Judge with the actor's expression of (an unfelt) confidence.

Gosling (fortifying himself with a glass of water) was politely and wickedly firm.

"Mr. Hewitson, I have already indicated to you my view on that. In marriage there must be give and take. Your client has admitted that more than once she left her husband to fend for himself. That wasn't very nice, was it?"

"If you, sir, are saying that that was not very nice, how can you take a mild view of what the husband did?"

Gosling knew when not to be drawn.

"I've made up my mind on that, Mr. Hewitson."

"In that case, your Honour, I can't pursue it farther."

Helen Davenport, her application dismissed, was protesting to Hewitson as to why her husband was not called upon to give evidence.

"Can't you put him into the box, Mr. Hewitson?"

"No, my dear lady; there would be no point in it and I could do nothing with him." (This was true, but he did not explain why.) "You must forgive me now, I have another application to make."

Hewitson's second application was even less hopeful. On behalf of the waiter, Henry Withers, or rather on behalf of that waiter's daughter, he was applying for a new summons against Williamson. Twemlow was opposing the application.

Said Gosling, "Be quiet, Mr. Twemlow. Allow me. I shall not grant your summons, Mr. Hewitson. I think it would be unfair to your client if I did. After a full and conscientious hearing her recent appeal was dismissed. It will undoubtedly be dismissed again."

"Aren't you prejudging the matter, sir?"

"No, Mr. Hewitson, merely giving you some good advice."

Romilly, leaving the court with Helen Davenport, said, "Cheer up, Miss Davenport. Why don't you try to get a divorce? You'll be able to marry again." The thought comforted her. She felt sorry that she hadn't briefed Romilly.

Henry Withers, looking very small and unwaiter-like, but pathetically defiant and on the edge of tears, was saying, "Conscientious! He's an unconscientious bastard." He seemed to have more than one sympathizer among those who heard him.

Coming away from the court with Romilly and Hewitson, Roper said: "Did you seem to hear the sound of tumbrils and the mob howling for blood?"

Said Romilly: "I'm afraid that's more than a joke, Roper. We live pretty protected lives, but through a crack in the defences there are rumblings to be heard."

Said Hewitson: "Nonsense, my dear Romilly. You are romancing. The Communists need lawyers more than anybody else."

But he did not sound convinced.

On Wednesday night attention was distracted from Judge Gosling by a sound that might, in other circumstances, have been interpreted as a banshee warning as to his impending fate.

But the wailing lament, rising and falling with stygian monotony, was generally accepted for what it was, the Free State's only, and typically miserable, contribution to the Commonwealth war effort: a lugubrious warning that enemy aircraft were overhead, and that Ireland was sorry about it.

In this instance planes were known to be on their way to more important objectives, where Baedeker cathedrals existed. In less than the regulation time, Judge Gosling, swathed in a dressing-gown, and loaded with the paraphernalia of emergency, was on his way to the hotel's commodious shelter, not because Conscientious Objectors' Tribunals have less of heroism than is expected from their applicants, but because it is the law that when the trumpet sounds the people shall show a praiseworthy alarm.

Romilly, whose dislike of Judge Gosling was well-settled, as we have seen, dating from as far back as the limited legal memory of his colleagues, did not feel inclined to share the said air-raid shelter, and was convinced that the danger in not doing so was negligible. Nevertheless, occasional bangings and quieter, sinister sounds jarred him from time to time; and he spent most of the alert moving restlessly and thinking about himself.

Others, during the alert, seemed to suffer less either neurotically or psychologically. Sir Charles Lumley and Healey made a great parade of their courage by occasionally taking their cigars into the open, to the consternation of the wardens; just two instances of the fact that physical courage is no guarantee of character, however useful it may be as ancillary. More quietly courageous, the hotel servants, including the waiter, grandfather against his will, got on with their work, satisfied at the respite from interference. The generality of the Bar was sociably alternating between the shelter and vantage points at the various windows.

Armiger and Helen Davenport had their own reasons for not seeking shelter.

The police, in turn, were glad of an opportunity to escape from their nursemaid functions and indulge in a show of efficiently and pompously doing nothing in the open. *Inter arma silent leges.* With the enemy overhead, the police were far more interested in exercising themselves as custodians of the Commonwealth than in protecting any part of it against any other.

In the result, many, including Armiger, Romilly, Miss Davenport, Healey and Lumley, were abroad in the corridors above and below. Prowlers, whether waiters with unfortunate daughters, objectors with unfortunate tribunals, or husbands with unfortunate wives, could roam at large without incurring reasonable suspicion.

For all the going and coming above and below, any transaction might be transacted. There was no means of ascertaining how many persons, interested more in Judges than in air-raids by way of judgment, contrived to be in appropriate places that night. Suffice it to say that if anybody operated, however feverishly, however accurately, and in whatever places, they might have been watched by at least one pair of eyes that looked more calmly on his or their doings, more cynically perhaps, but certainly with a better vision of future events.

Later in the evening, after the all-clear, Romilly and Roper, both apparently unready to sleep, were severally in the lounge, drinking within comfortable distance of the Chief Constable.

"You're not troubled with nerves, sir," shouted the latter to Romilly.

"No," replied the other.

Yet, at the end of everything, Romilly wasn't sure. He was thinking: you need 'nerve', control over nerves, to do anything unusual;—nerves, that was the word. He went on thinking about nerves—nerves of an athletic man, like Armiger, or Hewitson, or the control that a man of greater intellectual reserve might be able to exercise. What are nerves? A physical condition that

affects the mind, and is in turn affected by the mind; so that one man walking down a dark lane will let speculation about cut-throats induce fear into him, while another with better physique, or bowels in better condition, or less money on him, or less imagination, would not give cut-throats a concentrated thought.

Romilly was met at the end of his dark lane by Roper.

"Cheerful night."

"Nice and murderous."

"That reminds me," reminisced Roper. "I've been talking to your friend Gosling in the shelter. A deep distress has humanized his soul. He's beginning to like you."

"Soul?" grunted Romilly. "Did I hear aright? I thought you said soul?"

"I did say soul."

"What's your evidence that he's got a soul—and that it's getting humanized?"

"Well, he was oozing sweetness all over the shelter."

"That's his diabetes, old chap."

Roper, who could not possibly know the inwardness of Romilly's feud with Gosling, looked surprised, but continued drinking and talking.

"In particular, he was very nice about you. It may be the spark of humanity before extinction—or incipient general paralysis—but he said he liked you. Said he had confidence in your career, expressed regret that he hadn't helped you more. Said similar about me, too. More useful to me, perhaps."

Romilly stifled momentary feelings of resentment at the patronage of relative youth, and, possibly, a twinge of conscience, and took his mind away from the subject with a legal parable.

"Have you heard the story of old Swallow?" (a famous but extinct High Court Judge was referred to).

Roper indicated curiosity.

"He was listening to an insurance company, repudiating, as insurance companies will, liability to the third party because the insured had made false statements on his proposal form. They showed him a later admission of convictions that hadn't been disclosed. Swallow said,

'You show me the later admission to prove that the first statement, on the proposal form, was false. All you've proved is that, on the insured's confession, one of two documents is false. I don't feel bound to believe the later one. I'll believe the earlier one.' And he found no grounds for repudiation."

"Very neat," commented Roper, approvingly. "Swallow was a bit of a cad." (Roper hoped some day to act for insurance companies.)

"The moral is," continued Romilly, "that I don't believe Gosling's recantation. To me he was a villain; and what he says now about his good feelings and intentions I prefer not to believe."

"Quite," muttered Roper, as if he had reservations, and did not entirely sympathize with vindictiveness. Then a thought seemed to strike him as amusing. "Has it occurred to you, Romilly, that if you or I were short of cash, or anxious for advertisement, which we are not (or are we?) . . ."

"Which?"

"Both?"

"No. Not both."

"Then we could comfortably interfect the old gentleman, and get the work—saving Armiger, or Withers, that's the waiter—from getting the works. Nobody would ever suspect us."

The line of thought was interrupted by the return of Gosling, complete with bodyguard.

"Should we have sufficient control over our nerves, do you think?"

He was beginning to wonder whether Roper meant, or knew, more than he was saying. But the other proceeded innocently:

"Nobody appears to have had sufficient control over his nerves to do the old boy in yet."

Romilly smiled speculatively.

"Let's forget about nerves. Give me brute force and bloody ignorance."

"Says you regretfully."

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Romilly was not the only one concerned with nerves. Back in his room, Judge Gosling, reacting from a combination of physical and psychological strains and stresses, was, perhaps for the first time in his life, becoming acutely conscious of the fact that he was a very old man. Like a curtain suddenly descending, or like the sudden dusk as it falls in the tropics, a darkness and an emptiness seemed to cover the timescape ahead of him. Feeling sick, he had resort to one of the little bottles by his bedside. It did not stimulate him very much. Sardonicly he contemplated his own mood. It reminded him of the settled, hopeless expectation of death well known in the law of evidence. Any statement made by Gosling now would be evidence in a charge against anyone accused of causing his death.

That thought turned his mind back to the pattern of his life, which had worked itself out into a barren friendlessness.

"Am I developing a conscience?" he speculated cynically. "It's a bit late now."

His thoughts turned to Romilly and Armiger, and he realized that he was a cruel man and always had been so.

6

UNNATURAL DEATH

AFTER the air-raid the police resumed their guard and their peripatetics in the hotel; but by way of anti-climax Judge Gosling did not die the next day, or the day after that, or the day after that. On the other hand, he seemed to be behaving in a manner calculated to prevent people from killing him. He had indicated to the Chief Constable that he was letting the assault summons drop, and the news had been conveyed unofficially to Armiger.

By the week-end people were beginning to feel sorry for him, and, generally, to lose interest.

But the result was only postponed.

On the Sunday, when the spectators were taking to drink, and the drinkers had ceased to lay odds, a chambermaid reported that the Judge was lying in his arm-chair "very queer-like". The police surgeon, who had given up expectations, was spending the Sabbath, as Scottish doctors will, using less delicate instruments than his week-day ones on less offensive objects. He was playing golf. But a local practitioner arrived in time to find the Judge at death's door and not to be able to close it.

For the rest of Sunday, and most of Monday, the work of locking the stable door proceeded along the best lines.

The Chief Constable found himself closeted and re-closeted in conferences with the police surgeon, with detectives, with finger-print experts, with police watchers, with chambermaids, waiters, kitchen staff, the management itself, and any person whose name or function chanced to cross the mind of the leading police officials.

And always the Superintendent was reporting, who, in the ordinary way, would not have condescended to consult his chief more than once a year, and that only with a view to vacation.

But the Superintendent was getting no satisfaction. Everybody had been snooping round Gosling. No one had snooped. He was rapidly realizing the truth that where every triviality is of the first importance, then everything is unimportant (which is why the best people refuse to read newspapers).

In despair, after long interrogations, in which he had no guiding thread, and consequently got nowhere, he addressed his sole remaining idea to the police surgeon.

"Hoskins, I want you to look for poison."

The doctor sniffed ostentatiously.

The Superintendent proceeded resolutely: "I want you and the biologists to look for evidence (if you can't find anything immediate)—evidence of the fact that somebody administered to the deceased sugar, in his food or drink, so as to aggravate his disease."

The Superintendent stopped with a flourish. He was

very proud of the idea. To his horror, the police-surgeon laughed aloud, though apologetically.

"My dear Fremantle, when you police experts take to science you provide cause for unseemly merriment. Apart from the fact that ordinary sugar doesn't work like that (it's a question of 'ketone' bodies), you just can't trace a cause for a rise in blood-sugar. It isn't local enough. If anybody's done, in effect, what you suggest, then—damn it, they've done the perfect crime. Good luck to them."

The Superintendent saw that he wasn't making progress, and retired to a position from which he ordered the dispatch of the inner secrets of Judge Gosling to those who, in laboratories, "search the reins and the heart". That done, he proceeded to confide in the Chief Constable, who dealt with him roughly.

"Fremantle, old chap, you not only couldn't convince a jury of that, you haven't convinced me. However, keep trying."

In truth, there was little the police could do. They would not have been justified in asking any questions of persons (like the guests in the hotel) who could reasonably refuse to answer questions. Sir Charles Lumley had already offered his services, and the services of Healey, to the Chief Constable in a manner that indicated that the police had better not take any liberties. Nor were they inclined to; because they had no information with which to equip themselves for the purposes of questioning. They were reduced accordingly to the position that surgeons occupy when the patient is dead or incurable. They suggested nothing so much as the spectacle of a barber, laboriously trimming and tending the head of a very bald man, or of a doctor eating the fruit at the bedside of a corpse.

At long last, the Chief Constable, deciding that the campaign was over, gave himself leave and strolled (it was now late on Monday night) into the lounge, hopeful of recapturing, in the company of whomsoever he might meet, a trace of the resilience that a hard thirty hours had battered out of him.

Romilly, Roper and Hewitson were in residence.

"What's cooking, gentlemen?" asked the chief, using, in an effort after light-heartedness, a phrase dear to one of his more useful sergeants.

"Gosling," replied Roper brightly. "Come and have a slice."

The Chief sat down and was offered a cup of coffee.

"We ought to be expressing regret, Chief," ventured Hewitson. "Instead, we relish the opportunity of talking shop with a merchant as agreeable and well-informed as you. In a word, who did it?"

"Well, what do you think?" replied the Chief, who was knowing enough not to talk when he could get others to do so.

So far Romilly had said nothing.

"He looks," thought Roper, "as if he's taking the Judge's death more seriously than we are. We're excited and inquisitive. He's depressed. Perhaps a man over forty is worried more by death than a man under forty." Aloud, he said, "What do you think, Romilly?"

Romilly accepted the invitation gratefully.

"It's a question of selection," he propounded in his favourite didactic style. "At the outset, we have a victim so popular in public dislike—so many people have good reason to hate him, and so few to like him—that if you show me anyone who says that he could not have liquidated the old gentleman, I should not accept his declaration without careful examination of his mental and physical capacities."

"We are only wondering," put in Hewitson, "which member of the Bar might have done it."

The Chief Constable laughed heartily and deferentially, while Romilly and Roper gazed speculatively at each other's ears.

Said Romilly, mounting a hobby-horse: "Show me somebody more justified in killing the enemy and the mocker of justice than the man who stands in the very front line and receives the full blast of the sulphur and the vitriol."

Hewitson grunted appreciatively—Romilly was good

in his literary vein—and helped himself to further and better coffee.

"On that reasoning, if one wanted to murder a Judge, it might be as well to engage a Silk."

"Silks in general," replied Romilly, as if prepared for the point, "are a bit case-hardened and unsubtle; or else they've lived protected lives in lucrative commercial chambers. In any event, they've long since forgotten the ill-treatment that they may ever have received from puisne Judges or County Court Judges—they rarely go to County Courts. In the ordinary way, only a Lord Justice of Appeal qualifies himself to be murdered by a Silk."

"Yes," put in Roper, who belonged to Chambers in Town, "they are rude to Silks up there."

"And that, in any case, would be done by a colleague envious of seniority."

"Nevertheless," interrupted the Chief Constable, "up and down the country you won't find many barristers in prison on charges of attempted Judge murder—or indeed on any charges of violence."

"That may be because they don't do anything while they are in practice, known to be barristers."

"Or because they are clever enough not to be caught."

"I've no doubt that some strangely unexpected deaths of solicitors bear some relation to counsel whom they have bilked."

"But all in all, yours is a very respectable profession."

"It's not a profession at all," pronounced Romilly; "it's either a form of unemployment distinguished only by the total absence of assurances, State benefits and rights to assistance; or else it's an industry, a dangerous industry, with a high percentage of industrial accidents, in which only those survive who are fittest to survive, and fitness to survive is a function of pachydermy and thick-headedness."

"Yes," said Hewitson, looking at him speculatively; he was a bit surprised at Romilly's determined tone, "you've got to be pretty tough to get caught in the unfenced machinery of justice, as counsel so often do, and

come out alive. To change the metaphor, I had a bad dose of the late Judge Gosling the other day."

"Dose is the word," murmured Romilly.

The Chief Constable, who knew the affiliation story, decided to change the topic and spring his surprise.

"I notice you gentlemen don't ask me when the inquest is."

Hewitson smelt a rat, but gave the Chief his head.

"I shall insist on a subpoena——"

"Well," said the Chief, with the air of a conjuror producing his own handkerchief when everybody expected a rabbit, "you won't get one."

He paused for effect.

"You won't get a subpoena because there ain't going to be no inquest, see?"

"Are you telling us that nobody murdered the old boy?" asked Hewitson obligingly.

The Chief got down to it.

"After prolonged investigation, including a rapid post-mortem by our police surgeon with the aid of a distinguished local consultant, we find no suggestion of foul play."

The air thinned out to vacuum for a moment as thought-waves vibrated.

"You mean that you've closed the stable door and find that the horse is still inside?"

"I mean," he declared, sweeping round the jocular interruption, "no trace of violence, no reason to suspect poison, no anything: though we've sent as much of the old gentleman as will not be required for burial to the Home Office laboratories for the experts to play about with—in case of any South American arrows. But I think I can safely say that death was due to natural causes."

"Than which," commented Romilly, "in Judge Gosling's case, I can't imagine any less natural cause."

When the Chief Constable had gone, Hewitson murmured to Romilly, "The perfect murder, shall we think?"

"As to that, I'm not happy. Look here, you boys, when drinking develops, as it will in half an hour, keep as many of the police down here drinking as you can."

"Certainly. What are you going to do?"

"I want to see what a lot of people are doing and whether the horse really is in that stable!"

Hewitson was left wondering whether, or how much, he disliked Romilly. Roper, realizing the atmosphere, was wondering whether Romilly (whom he liked and admired) was the judge of character that he was reputed to be.

7

INFORMATION RECEIVED

THE technique of the best murder aims at concealing from the world at large the fact that any murder has been committed. Some murderers there are, purists in their work, whose effort is yet spoiled by a vanity which insists on letting the world know what has been achieved—on the principle that justice should not only be done, but should also appear to be done. They, however, run the risk of confiding to the world accidentally the indiscreet information that leads to their arraignment. Being artists, they sign their work for the hanging.

Whoever murdered Judge Gosling—if he was murdered (and Romilly and others thought he was)—aimed, consciously or unconsciously, at the superior, self-effacing type of human erasion. To Romilly, who, for a variety of reasons, was sure that the death was abnormal in the conventional sense, it came as a surprise to observe that, for all the previous goings and comings, now nobody of importance appeared to harbour even the shadow of an idea that things were not as outsiders thought they should be. To the majority of people in Daneford the death of the Judge came as a not unwelcome surprise, untinged, however, by any nuance of the sinister. Persons of importance put on their best clothes, uttered conventional sanctimonies, and waited with interest for the obituary notices. Among these Romilly moved and observed, and noticed no evidence of any suspicion.

The Bar was discreetly interested in the succession to

a lucrative appointment. The Chief Constable, who now stayed at the hotel, stayed not in his capacity of inquisitor, but rather as a henchman of an important magistrate, standing by to pay his respects to one whom, rather unworthily, he regarded as his superior. A similar sentiment brought the local coroner, who agreed that there was no need for his services. Judge Gosling's doctor, an elderly Scotsman, sound and shrewd, thought that the Judge should have lasted a bit longer; but signed the death certificate with only the same kind of reluctance that possesses a debtor when he finally hands over one of his best securities to his bank manager.

"A great loss," murmured Romilly, as he shook hands with the doctor, one of his favourite expert witnesses.

"At least four hundred pounds a year," replied the other sadly.

"Nevertheless, I suppose a diabetic is a bad security."

The doctor seemed surprised that any layman should know that his patient was a diabetic, but Romilly, continuing with the air (which the best counsel achieve) of knowing more about the subject than his interlocutor, swept the surprise from his mind with his next sentence.

"I knew he was a diabetic because he seemed comatose and drank a lot of water. I suppose patients have no warning of a sudden rise in the blood-sugar?"

The doctor was interested.

"As a matter of fact, they have. But accidents will happen, especially in severe cases, where death may even occur during sleep."

"What happened here?" (more casually than possible).

The doctor was unsuspicious of interrogation.

"We don't know exactly what happened here, because blood tests after death don't reveal very much. The sugar in the blood may have risen for many reasons: because he departed from his diet system, or because he forgot about his insulin. Marvellous stuff, insulin."

And the doctor plunged into the story, which Romilly already knew, but which lost nothing of romance through re-telling, of a Canadian researcher's stroke of genius which revealed to science the exact nature of the secretion which is absent in diabetes, and the knowledge of which

the mind of Banting brought back from its voyages among the islets of Langerhans.

"Undoubtedly he did a good thing, this inventor," suggested Romilly, "in prolonging the lives of people as important as Judge Gosling." (The doctor smiled appreciation of the irony.) "But they live dangerously, don't they? An over-dose, perhaps?"

The question was designed to secure confirmation of something.

"In this case, a shortage," corrected the doctor. "Certainly they're a bit rail-bound. But the only danger would be if somehow they lost their insulin. But who'd steal insulin, anyway?"

"Is there no poison—or even relatively harmless drink, food or injection—to which a diabetic would succumb?"

"None that would not leave a trace. An external scratch might be fatal to a diabetic, and not to an ordinary person."

"Here we have no scratches?"

"Precisely."

And the doctor departed with his mind immunized against further speculation by the dose which Romilly had, intentionally or unintentionally, injected into him. If he thought anything, he thought that barristers were, by nature of their work, a well-informed set of men.

At this stage the shade of de Quincey would have been pleased with the fineness of the art manifested by whosoever had liquidated the enemy of the proletariat, if indeed anybody had. But the shade of de Quincey would have reckoned without the human need of even a conscientious objector for strong drink, without the deplorable pugnacity of sections of the *bourgeoisie* when saturated with the fumes of beer rather than opium, and without the vindictiveness that may be found even in the proletariat. To cut a long story short, the conscientious objector chanced into the public-house opposite the hotel in order to celebrate, and drink the health of Nemesis, at the precise moment when two or three of the local and visiting bullies were achieving belligerence.

To the brain of the commercial traveller, Healey, who, on inspection, could be seen to bear the jowl which, in that class, corresponds to the supercilious beak and brow of an older tyranny, the sight of Armiger suggested a target to be talked at.

"There'll be some who'll be glad to see the end of old Gosling. I could mention those who never were keen on facing patriotic Tribunals."

The remark was addressed to Twemlow, who grinned, but was not anxious to quarrel with a man whom he feared slightly; for Twemlow did not go in for facing people.

Armiger, who knew that the remark was addressed at him, and was not of a mind to let anything pass, replied to it: "I could mention a few who'd be only too glad to see the end of any magistrate. Particularly those who deal with black-market offences."

Healey was not as cautious as Twemlow would have wished.

"Who asked your opinion, you bloody conshie?"

Armiger, who, since his expression of reluctance to fight before Judge Gosling, seemed to have done nothing but get himself involved in violences, found sufficient belligerence now to smack the man's face and throw his beer over him. The reply was convincing and provoked no immediate response except a hasty withdrawal by Twemlow. But at the moment of action Armiger did not know that his victim was Healey, or that this was the husband of his new-found friend, the receptionist, and, as we have seen, one of the only persons in Dane-ford with any reason to be grateful to Judge Gosling, and consequently one of the least likely to be suspected of mischief. Nor did he know that Healey, being equipped with the kind of mentality that is developed in commercial taverns, was in turn a patron of that equally undesirable antagonist of his—the hotel "boots".

Thus Armiger had applied unknowingly the final stimulus without which two cunning but hesitant, limited brains would never have been stirred to action, or further action.

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Helen Davenport's husband, who knew how to be sycophantic, knew even better how to exploit a mentality developed in polishing and salivating over the footwear of others.

His vengeful feelings were not lessened when Williamson, the same night, confided to him further details of the relationship between Armiger and "your good lady".

This information gave Healey the chance of concretizing his thoughts into a course of action.

"What night was that?" (He knew very well, but considered it unnecessary to mention the "boots'" personal discomfiture.)

"Tuesday."

"That wasn't the only night, was it?"

"Well, I saw him on the air-raid night, hanging about. He may have been waiting for her—in fact, he said something on Tuesday about to-morrow night."

"Listen, you fool. I'm not interested in what he was planning with my wife. Do you realize that you—you and I," he added so as not to frighten the man unduly, "might be concealing something pretty sinister?"

"You mean Judge Gosling?"

The poison had taken effect. Healey allowed it to penetrate for some moments before putting a suggestion.

"What about a letter to the police?"

"Will you write it, sir?"

The "sir" was a confession of dependence and inferiority.

"No—you saw it. Here"—and as a little money changed hands—"get yourself a couple of whiskies and see what you can do. Show it to Twemlow."

In Twemlow's disreputable, dirty, but prosperous office, Williamson was kept kicking his heels in a waiting-room filled with those whom Twemlow had not yet decided to have prosperous enough cases, or sufficient money, to justify expedition.

When he was finally shown in and allowed to stand at a desk facing a mean, animal pair of eyes which looked a great deal keener and more important there than they

looked anywhere else, Williamson was in a state of mind to do anything he was told.

Twemlow had been primed by Healey, with whom he did a lot of business of one sort or another.

Twemlow had no liking for Armiger, whom he did not regard as a likely client. (Twemlow liked his clients obsequious.) Twemlow also did not like Romilly. (Twemlow liked his barristers sufficiently ingratiating to consolidate his feeling of superiority to those whom he obliged with briefs.)

Without, therefore, giving away any of his ascendancy over Williamson, he endeavoured to convey to him that he had nothing to fear from the police.

"I'll look after them for you. I'm on the best of terms with them."

In a queer sense, this was true.

He also contrived, without participating, to indicate that a letter might be sent in a certain form, in a certain type of language—base, rather than basic, English—and not necessarily with signature.

"Don't be afraid of assisting justice, Mr. Williamson."

It had to happen also that the Superintendent of Police at Daneford was a non-combatant soldier of the type which is "long" on patriotism and "short" on all other virtues. The tolerance that comes to soldiers in the trenches had not found its way into the heart of Superintendent Fremantle.

To him, then, an anonymous letter, indicating that a certain conscientious objector knew more about the death of the patriotic Judge Gosling than a conscientious objector should know, came as a stimulus, an inspiration, and a challenge.

So it came about that the Judge was already sleeping with his fathers (if they could be ascertained) when a chain of causation was initiated which eventually was to keep the Chief Constable from his more comfortable couch in order that he might wrestle with the resurrected possibility that Judge Gosling was a misadventure or a homicide, and not a death by natural causes.

DETECTION AS IT IS PRACTISED

THE anonymous letter that came to Superintendent Fremantle was simple in its terms. The simplicity was distilled of midnight oil.

"I saw that Conshie feller hanging round Judge Gosling's room a few times last week. He was there for about an hour on Wednesday night.

Yours,

JUSTICE."

Superintendent Fremantle knew about the incident in the bar—as he knew everything that went on in Dane-ford—knew that Helen Davenport's husband was "thick with the boots", and knew much else besides. It took him an hour or so to make up his mind that this was the likely man; then exactly three minutes to extract from Williamson an admission that he was the author of the anonymous letter, and another ten minutes to satisfy himself (as he was already prepared to be satisfied) that this person had actually seen something.

The "boots" (who, among his friends, pretended a contemptuous affection for the police) was left by the Superintendent feeling convinced that he would be prosecuted for all the larcenies he had ever contemplated, all the "loiterings with intent" that he had ever loitered, inside the hotel or outside, unless the conscientious objector was hanged. He had even acquired more than a hint that he himself was a murderer, a principal, an accessory, an aider and abettor, a concealer of evidence—and, failing all that, the perpetrator of a public mischief.

The letter came early enough to be thought about while the evidence, such as it was, was still fresh. The suggestion it contained was consistent with the atmosphere of suspicion with which the Superintendent was still investing the hotel, its residents and visitors. The continued

presence of Armiger in the hotel was, to an imagination that had been stimulated from the receptive to the diagnostic, simply one more instance of the criminal haunting the scene of his crimes. At least one policeman had reported that Armiger had been seen in the neighbourhood of Gosling's room since the Judge's death. In consequence, Superintendent Fremantle was satisfied. Though he did not put it that way, it looked as if the arrogance of the sinner had incurred a satisfactory Nemesis.

The Chief Constable was not so easily satisfied.

"My dear Fremantle, the idea's preposterous. The man has been staying in the hotel. Suppose he was hanging round, as that spiteful muck-raker alleges, what did he do? Tell me that, what did he do? An affair with the girl upstairs, perhaps. But what did he do to Gosling? Not a bruise, not an injury, not a drop of poison, not a microbe—except Williamson."

The Chief walked up and down his room, mouthing maledictions. But Fremantle was made of stern stuff.

"Suppose we do nothing, suppose the fellow Williamson—or the bloke who put him up to this letter—talks to one of these lawyer-fellows, talks to Lumley; suppose somebody asks a question in the House?"

The Chief was excited enough not to see the fantastic nature of the suggestion, and it hit him in a weak spot.

He stopped walking. Fremantle followed up.

"In any case the responsibility shouldn't be ours. What's Scotland Yard for? What's the Home Office for . . . ?"

The Chief seized on this as to a straw.

"The Home Office—they can do a discreet inquiry. I'll get on to them."

So it came to pass that a heavy file of papers was prepared, including every incident from alpha to well past omega; and in due course these, together with some intimate parts of Judge Gosling (which already were in London), were placed before many quiet-speaking men in horn-rimmed spectacles, and one of them, on a day,

found himself in the private office of the Chief Constable looking shrewdly at one of the Chief's best cigars.

The man from the Home Office, who suffered under the name of Augustus Lowther and many letters thereafter, was a long, black torch of a man with a thin, saturnine face and a jaw suggestive of a dark lantern. His presence made the Chief Constable think that Sherlock Holmes was a more living character than many policemen who had merely existed in fact. His manner was brusque and incisive, sardonic at times; but in reality his intelligence was lambent and pervasive, and his quick, dogmatic utterances were end-products rather than characteristic features of his mind.

With the Chief Constable he was being official and analytic, with occasional flashes of friendlier intellectual indulgence.

"I've read the papers in this case, and I want to make one or two general observations. You seem anxious to establish a *prima facie* case of murder here; in particular against one Claude Armiger, a conscientious objector."

The Chief Constable murmured assent.

"Well, for my part, I don't understand your enthusiasm in this direction, but it's my job to help you. In the first place, I observe that Armiger is twenty-five years of age and a man of considerable intelligence, with pronounced ideas, if not ideals. Now, from what I can gather, it is not suggested that he is a propagandist of conscience, killing Judge Gosling as an act of faith. That suggestion might appear (though it would not necessarily be) contradictory, in view of the creed in question. More important, fanaticism works itself out in public rather than in private crime. I observe that Armiger has, in fact, developed quite a history of violence since he entered his name on the register of conscientious objectors. That is not inconsistent. Conscientious objectors have been known to manifest considerable courage of a physical type. But the allegation here is concealment, a secret crime which one would expect to constitute a greater strain on conscience than would be, for example, the throwing of a book at a Judge, or, equally aptly, beer

at a commercial traveller. On the whole, the police suggestion appears to be that, as a result of one contact—admittedly an unpleasant one—this conscientious objector felt himself impelled to abandon his principles, or to depart from them in a ‘striking’ manner.”

The inverted commas were audible.

“If he really held any principles at all,” suggested the Chief Constable, wondering, not for the first time, why the upper ranks of the Civil Service were becoming so Socialistic. The speculation penetrated his tone—and made it sound more critical than he intended it to be.

Lowther contemplated him for a moment without comment, and then resumed:

“For the purpose of this argument (because it is becoming an argument) I have assumed so far that this man genuinely held the principles in question, because, clearly, he is not wanting in self-reliance and courage, and, obviously, is not the kind of man who would object to military service except pursuant to a principle. But if you wish to change your ground, it doesn’t matter. *The question of his principles is probably academic*, because I have arrived at the conclusion, with which you will probably not disagree, that this is a young man of a forceful type and a character of some strength, not overburdened with subtlety; and it seems to me psychologically wrong to associate a clandestine murder—at least, one of this degree of clandestinity—with this particular man. Besides, I repeat, he’s young—in every way. In general, observation of the essential features of individual cases, added to statistics that have been taken, indicate that murder is not a young man’s hobby or practice. The risk is not a young man’s risk. A young man with much to occupy his mind is never likely to be so pessimistic, so desperate, so subordinate to the pressure of circumstances or of persons, as to feel the necessity for really vindictive action against individuals. A reaction against himself—possibly; against others—it would be no solution. Suicide, possibly, given a certain manic-depressive extreme; murder, hardly. If murder, perhaps a striking down in hot blood. But the planned murder (that the introverts of this world are capable of) belongs

later in life. The patient planning is more in accordance with the mentality of the old. The young tend to act on intuitions which may be brilliant, and which they execute brilliantly. They don't wait for favourable circumstances. A brilliant crime may have been committed here. I doubt it. If it was the product of a stroke of genius, we shall never be able to prove that it was a crime." The Chief was respectfully listening.

Lowther puffed at his cigar for a moment, and resumed:

"My first general observation, then, is this. I advise you to look for somebody older than Armiger—somebody fifteen to thirty years older; someone for whom life has lost its futurity; someone reconciled to life, that is to say, with the settled hopeless expectation of death, that comes to people who have lost their futures. Such a person is much more capable of an act of will based on implacable indignation or smouldering hatred than is a young man. Young people hate themselves. You have to be old to hate others." Lowther paused, and smiled to himself, as if conscious that he was being rhetorical or didactic. "I won't say that that is your experience, too, Chief Constable."

The Chief Constable was now thoroughly impressed and appreciative; and too interested to accept the offer of relaxation. Nor did he suspect that his chemist was escaping into psychology.

"Had you anybody specific in mind, Mr. Lowther?"

"Not specific." Lowther was didactic again. "I was talking in classes. But if you wish me to be more specific, it seems to me that this particular hotel is full of candidates for the appointment of murderer to Judge Gosling. It seems to contain at least one man (a waiter) who feels that he has been the victim of a grave injustice at the hands of Judge Gosling. The Judge appears to have given a bad decision against his daughter."

"I know the case you mean," put in the Chief Constable.

"And although litigants usually persuade themselves that the decision was not unjust, so that they shall not feel too aggrieved in their minds, this appears to have been a gross miscarriage of justice, and calculated to rouse a poor man who hasn't very much to live for and

is advanced in years, to a state of determined rebellion centred against the person who had wronged him. I mention all that as a possibility. Then again, you have at least one female member of the staff with a grievance. You have a male resident who is an undischarged bankrupt and not without a knowledge of chemistry. Your Superintendent tells me that this one probably instigated the anonymous letter. If he's capable of it—I haven't seen him—that may be a sort of barrage or camouflage to attract attention away from himself. I don't attach a lot of importance to that. Then you have your local M.P. with a grievance against Judge Gosling."

He looked quizzically at the Chief Constable.

"And in case you think that's blasphemy, I'm now going to be far more blasphemous, and say that you have here, in addition, licensees whom (I gather) Gosling was constantly blackmailing, in that they had to be constantly nice to him because of his power as chairman of the Licensing Sessions—a strange position, incidentally, for a man whom nature or conviction has rendered allergic to alcohol."

The Chief Constable was embarrassed by this new-found wealth of suspects.

"I hadn't thought of those, at all."

"Neither have I, really, for a reason that I shall develop." It was, in fact, just occurring to him. "Having regard to the fact that, if this is a crime, it is an unusually clever one, I would suggest that you consider the most intelligent element you have in Daneford."

"Such as?"

"Well, what of the lawyers who throng in this hotel almost as thickly as in the bear garden at 1.30?"

"I'm a bit surprised you think like that about lawyers."

"I meant, of course, barristers mainly (I'm one myself, incidentally). But lawyers generally, both classes, though they are not, for the most part, brilliant minds, are people who do actively use their minds more than the average. They usually have something to think about, some problem to solve; and though they are mainly analytic, they can see far enough ahead to be able to construct a plan."

"But why should one of them kill Judge Gosling?"

"Why not?" Lowther was now developing what had been a casual idea. "Can you imagine anybody more likely to hate Judge Gosling than an advocate who repeatedly appeared in front of him and had a ringside seat so as to watch his injustices; or worse, has been the vehicle through which the unjust blow was delivered at a client" (Lowther was sounding Socialistic again). "To such a one the Judge may even have said something calculated adversely to affect his career. Such a one, advancing in years, may feel desperately about his future, and may blame his misfortunes, not on himself, as a younger man might do, but on an individual like Judge Gosling; and might murder him."

The word 'murder' seemed to bring the Chief Constable down to earth, and showed him an escape from intellectual discomfort.

"Mr. Lowther, if I may interrupt you. We are using the word 'murder' a good deal. And so far, my men haven't found anything indicative of an unnatural cause of death. There have been suspicious circumstances—people hanging round the Judge's bedroom; suspicious characters in every corner of the hotel. But his internal organs show the normal development of a diabetic condition, and his body shows no signs of violence; not a single bruise."

He looked at Lowther rather beseechingly.

"Did you find anything different?"

"No."

"Well?"

Lowther contrived, in return, to look more supercilious than ever.

"Oh! that. That's very easy. I've got your process for you. You people have all assumed that when one man murders another he puts something into him, or on to him, which can be readily observed, visually, with or without the aid of the microscope. You say, 'Something has been added, let's look for it'. But does it never happen that something is taken away; that a human being is deprived of something without which he cannot live? Suffocation would be a case in point, if one could do it without leaving marks of positive action. But here

we have the ideal case. A diabetic. I was put on to this, accidentally, by Armiger's remark 'You sanctimonious old diabetic!' A diabetic needs insulin in order to survive; perhaps somebody went and deprived Judge Gosling of his insulin."

The Chief Constable reacted to this calm pronouncement as the waves react to the calm vacuum which is a cyclone. His brain-cells stormed within him. Finally, he blurted out what happened to be a very pertinent observation: "We found bottles of insulin in a little cabinet by the bedside."

"Well, I suppose I ought to say that you couldn't go farther than that. Unless you had the idea, or intuition, of the possibility of death by deprivation of insulin, you wouldn't have made the tests that would have shown you that death was due to deprivation of insulin. But now you have the idea, why not try it?"

The Superintendent was summoned, and sent away; and he quickly returned with a container, like a small tantalus containing a score of small bottles.

"Give me those," commanded Lowther. "Also give me a laboratory and give me an hour."

At the end of an hour Lowther was sitting at the head of the table, flanked by the Chief Constable and the Superintendent, with a note-book spread out in front of him.

"... I find as follows. I have examined these twenty bottles. Of these seven were empty, having been used; following those seven, six which contained insulin that appeared to be completely neutralized, then seven with increasing strength of insulin. But even the weakest bore the typical oleaginous appearance of insulin." Glancing at his listeners he explained the implications. "It looks as if somebody had arranged progressive deprivation, so that the deprivation would not be noticed by the patient; and that the patient succumbed after the seventh injection of the diluted substance."

"Progressive?"

The Superintendent was dimly conscious that the word was not being used in a political sense.

"Ah yes, that's very clever. You see the inference. Whoever he or she was, could not be sure from which end the Judge would work—which bottle he would use first and which last. So he or she had to arrange progressive deprivation towards the centre. You follow me?"

The Chief Constable, to whom the answer was addressed, did not, but he was sufficiently hardened to shock to be able to ask an intelligent question. "Would that—the whole process, I mean—constitute poisoning?"

"Not poisoning in the strict sense, I think; why not say 'deprivation of the means of subsistence'? If you say poisoning, you've got to allege the poison. We don't know what the substance was; but it was probably innocuous in itself—water possibly. No. I think not water. Possibly one of the varieties of sugar. No not that——"

Lowther got up and began to pace back and fro across the breadth of the room. For the first time he appeared to lack certainty. He talked, as the best people talk, to clear his own mind as well as to enlighten others.

"You must remember, Chief"—his tone was almost apologetic—"that although insulin is a substance that can be chemically described, it is not a chemical compound in the strict sense. It can't be synthesized; consequently it can't be analysed. Therefore, when it's diluted the dilution may be impossible to describe accurately. But, even so, there's something funny here. It occurs to me that if the substance introduced had been water or sugar (glucose, that is), I should have detected it, because it would not blend without trace. Now, I did get the impression that something had been introduced—something sufficiently similar to insulin to be unrecognizable. It couldn't be more insulin, because, although that would possibly be fatal, there'd be no weakening of the present type."

Lowther stopped walking.

"I'm saying all this, Chief Constable, in order to elicit from the back of my mind an idea that's been in it for some time now. It's a quite fantastic idea. Someone may have introduced an organic substance—not a chemically identifiable one."

"What had you in mind, Mr. Lowther?"

"A gland extract."

"Would it be a poison?"

"No; for that matter water isn't a poison, nor is sugar, nor diluted insulin, in abstraction from the circumstances. Taken as a function of these circumstances, diluted insulin is a deprivation of insulin, just as bread and water, as a diet, given, say, to a child, is deprivation of nourishment. On the whole, I think an indictment in that form would stand up."

"But what do we look for?"

"Whatever you can find, my dear Chief Constable."

"And whom do we indict?"

"That, my dear Chief Constable, is for you to decide; and the evidence is for you to collect. May I suggest that whoever abstracted any insulin had to get rid of it? They may not have had the opportunity of getting rid of the receptacle that they used, or the syringe which must have been used, or the special substance required, or the insulin itself. Perhaps a search under floorboards and, if necessary, in drains might produce some fruit—if drains ever do produce fruit. And that," said Lowther, "will provide admirable work for your excellent force."

The Superintendent, whose mind was made up, was ready with a question.

"Would it have to be a chemist?"

Lowther looked at him sadly.

"It depends on the substance used. Anybody can buy a syringe. Anybody can buy, for example, glucose. As to whether it needed a chemist to think of it—well, I don't know. I can't judge. You see, among other things, I'm a chemist—so I don't know how non-chemists think. But," he added, "if the substance turns out to be non-chemical, then a chemist did it."

The Chief Constable still clung. He offered Lowther dinner. Lowther refused; he had an appetizing corpse waiting for him in Birmingham. His parting advice was kindly.

"You'll need the Director of Public Prosecutions on this, and a hell of a lot more analysis of the substance."

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When Lowther had gone, the Superintendent approached the Chief Constable with the tactful air of a father who had established his claim to the attention of a somewhat recalcitrant but not completely unreasonable child.

"Our main indication is this, Chief, if I may suggest it. The man Armiger has been seen snooping round the room since the death. Isn't it arguable that we now know the reason?"

"Oh! get on with it," protested the Chief Constable, impatiently, and a little unfairly. Then he added, "Eliminating other suspects and asking as few questions as is consistent with our duty. We are not very popular, you know."

Arrived at the Home Office, Lowther confided to one of his junior colleagues: "The ductless glands act functionally, not as chemical substances. You will therefore appreciate, my dear Reed, that the dexterous use of a gland extract to neutralize insulin gives almost an ideal method of murder. It is always difficult to prove a death to be due to a defect of function. It is virtually impossible to prove the neutralization of one function by another."

"I take it," commented Reed, "that you wish this Daneford fellow luck."

9

REASONABLE SUSPICION

THE Superintendent had his instructions, and the rest was routine.

Obviously the first suspect to be treated (with a view to elimination) was the waiter—a nondescript grey man in his late fifties, who was obvious to the police because they knew that he could be examined with more thoroughness than could another who happened to know that he was not obliged to answer questions, or happened not to have employers who needed the goodwill of the police.

Henry Withers, the waiter in question, offered no resistance to prolonged and reiterated cross-examination, technically proper because the Superintendent had not made up his mind to make a charge; morally improper because the victim lacked the knowledge or courage to terminate the impertinences of an overbearing official.

A stooping, grey man, looking less significant off duty even than on it, he would have constituted an ideal suspect on the principle that waiters, like postmen, are "invisible" men (whether wanted or not wanted). They move about unnoticed as a mobile element in the furnishings. But there the matter ended. Here was one not only invisible, but, in the Superintendent's view, all but non-existent, and completely ineffective. And he looked guilty enough to be innocent.

The Superintendent interviewed him on his afternoon off, when he could be kept indefinitely without a good excuse for protesting. After hours of suggesting all sorts of interference with food, and only a passing reference to little bottles, Superintendent Fremantle had gained no satisfaction except to his vanity; for, although Withers insisted on looking and sounding nothing but guilty, he was endowed with the obstinacy of the wronged, and was able, moreover, to give a reasonable account of his movements; and though he had ample opportunity to go into Gosling's room, there was no evidence that he had been in except in the normal course of his work. And there was certainly no evidence that he knew anything about insulin—or about the bottles on the Judge's table. The carefully casual reference to these had elicited from the demoralized subject less guilt tremor than other questions; and the experienced Superintendent knew his man well enough to recognize the negative reaction.

Finally he dismissed his victim with warnings by way of apology—and remarked to his sergeant, "N.B.G."

"Opportunity, motive—" suggested the sergeant.

"Nothing doing, my lad. Show me that he worked in an insulin factory (if there is such a place) and I'll put the bracelets on him."

After a little thought, some casual questions to staff,

and a further talk to (rather than with) Williamson, the Superintendent decided to cut things short. He felt unequal to Lumley, unequal consequently to Healey, and unequal to the management. Others were out of the question; wherefore he moved nearer to his objective.

From Helen Davenport the Superintendent expected nothing and got nothing. After seeing her he realized that not even a sergeant would have been more fortunate. But he did receive the information (which she seemed anxious to impart) that on Wednesday night, just before the Judge's return from the air-raid shelter, she had been talking to Armiger on the third floor.

Finally, he accosted Armiger, who, needless to say, gave him no satisfaction at all.

"Would you care to answer a few questions, Mr. Armiger?"

"Not to any man with feet as big as yours," replied that hero; and after an interchange of courtesies the Superintendent retired, convinced of Armiger's guilt, and more than half convinced that he would never be able to prove it.

Meanwhile the police were able to prevail upon the management to allow them to examine the floorboards and drains at such times as the hotel was reasonably empty. The result of these tests, too, was negative.

The Superintendent reported to the Chief Constable.

"You've come about Gosling?" asked the Chief in the detached way of one who knows little about it. "Any developments?"

"Nothing doing, Chief."

"No insulin in the insulations?"

"Insulations?" The Superintendent eventually recognized the jocular intention. "Nothing under the floor, anyway."

"Well, these people have got homes, haven't they?"

That remark revealed to Superintendent Fremantle that he was dealing with a better, more unscrupulous, man than himself. He felt mildly grateful.

"What can I do about their homes, sir? Armiger lives at Little Worsley," he added, inconsequently.

"Well, we can't get a warrant, can we?"

This in the Chief's best parade-ground manner.

"No, sir."

"And we do know the police at Little Worsley, don't we?"

"Yes, sir."

"And what are you going to be when you grow up, Super? A burglar?"

A nod was as good as a wink to that particular horse.

A visit to his home at Little Worsley a week later had the effect on Armiger that is created by opening a room door and finding that someone has left the light on.

He knew that his room had been searched—and could do nothing about it.

To Helen Davenport that night he seemed distraught, and, for the first time, refused to talk about Gosling.

"Did they ask you any questions?"

She had already told him of her own interview—indeed, he had advised her as to her answer, which happened to be a true one.

Now she saw something in it that made her feel less confident. She collaborated, however, in laughing off the incident.

She was not sure now that she wanted to question her new friend farther. Instead she thought about Romilly. As for Armiger, he was too self-contained to reveal to her that he felt rather like a doctor who had seen in his own body signs that he knew to indicate for certain the presence of a malignant growth.

The telepathy that accompanies a woman's interests or affections, or possibly the possession of knowledge that she should not have possessed, eventually drove Helen Davenport to seek the advice of Romilly. Already they knew each other quite well, though a certain reserve, due perhaps to a difference in age or to the consciousness of emotional possibilities and uncertainties, had prevented the development of exchanges that either of them might have indulged with somebody less well known. With her

matrimonial problems Helen Davenport had gone to Hewitson, who was a comparative stranger to her, and had realized at once the advantages of efficiency and the disadvantages of a defect of interest or sympathy. She knew now that she had been wrong to choose Hewitson. And now that something more vital was developing, a sound instinct directed her away from the smooth stag of the Law Courts to the middle-aged bear from the Bear Garden.

They spoke together in a remote corner of the empty lounge of the hotel at that time of the afternoon which is a hotel doldrum between the licensing winds and the roar of tea-time. Before they had exchanged even the conventional courtesies, enough sympathy had been established for them both to realize that they had wasted a lot of time in the past and that the present had suddenly become interesting.

"To tell you the truth, Mr. Romilly, I've come about my own position . . ."

"My dear Helen," interrupted her listener with an unexpected vivacity and giving an unexpected sense of youthfulness to his manner, "I am much more likely to believe a falsehood than anything that begins with 'to tell you the truth'. You've come about our mutual friend Armiger."

Her expression of mixed relief and embarrassment gave him his cue.

"Please don't tell me that you intend to marry him when you're free."

Up to that moment her mind had undoubtedly been determined by this so far unexpressed possibility. Now that it was expressed, and that by a man whose human insight seemed so much more penetrating than the analytic ability of the young chemist, she replied quickly, "No, not by any means," and felt a little relieved. "But I do want to help to get him out of trouble. I've got some money," she added helplessly.

Romilly saved her further embarrassment by changing the topic.

"Aren't we both, my dear" (she found the expression much more satisfying than the "my dear lady" that

Hewitson had used), "making the mistake of assuming that Armiger's in trouble? Is he in trouble?"

They looked at each other, and in the look each of them saw that the other knew more than he or she cared to talk about, and that between them many things that others might have said did not require to be said. The woman broke the pause.

"Neither of us can answer that, can we? We don't know the worst, but we've got to assume the worst."

The answer was not well phrased, but there was no need for further discussion.

"What do you want me to do?"

"Well, I feel a bit responsible. . . ."

He stopped her.

"Please don't say that. I don't know what you may have done or said; but there can't be any question of your responsibility. Please forget about that."

She felt infinitely grateful. It was as if a competent psycho-analyst had eradicated an obsession from her consciousness. In a relieved tone of voice, and with a clarity that she felt was due to the man she was talking to, she said: "I want you to act for me; I want you to defend Armiger if anybody charges him with anything."

Romilly nodded. It seemed to him that the existence of Armiger had become, as a result of the conversation, less important to both of them; but that, for more reasons than he could name, it was important to do well for him. Now it was time to give the conversation a less serious turn. In a tone at once more business-like and more light-hearted, he explained a difficulty to her.

"I'm afraid it isn't as simple as that. If I were a doctor, and a friend of yours fell ill, you could call me in and I could attend to him on the spot; but since I am not a doctor, and since the problem relates to a man's life and liberty rather than to a cold in the head, you must go through a routine. You must go, my dear, out into the highways and byways, and find, probably under a stone, a being called a solicitor. Whoever he is, he is the one who must brief me. They make their living, these people, by sucking the blood of me and my kind. But still, get an efficient one and turn him loose on me. He will want from

you a large sum of money, of which I may get a little. Take care that he doesn't give it to his nephew, or the nephew of his favourite Building Society, or some other *persona* more *grata* with him than I am."

As he spoke, the girl grew more and more conscious that she was dealing with a human being whose characteristics included nice eyes and in them some pathos, much unfulfilled promise, and considerable courage.

"Well, you're *persona grata* with me, anyway."

They both rose, shook hands cordially.

"We'll be seeing each other," said Romilly.

The thought gave them both pleasure. . . .

Helen Davenport went away feeling reassured, feeling also that she had seen a mighty battleship, not in the ocean, but in a small river, acting occasionally as ferry-boat, now as life-boat. She liked it. She was wondering whether she could call it "Alfred".

10

EVIDENCE FOR THE PROSECUTION

"**W**HERE did you get these from?"

The Chief Constable, with a very thoughtful expression, was revolving in his hand a round bottle which seemed to be filled with a white powder. Other bottles of the same type stood on the table. The Superintendent was holding one filled with an oily substance.

"This," said the Superintendent, "is insulin!" He referred to a piece of paper—"a very small quantity—less than would be accounted for by abstraction from twenty small bottles; but some would get lost; so that it corresponds with Dr. Lowther's estimate of abstractions."

The Chief Constable looked worried.

The Superintendent continued: "These other bottles contain pituitrin. According to the analyst, anybody with a modicum of technical skill could slip a little

pituitrin into an insulin bottle, with the aid of a syringe, neutralizing the insulin, and nobody would be any the wiser. You see, sir, pituitrin is the opposite of insulin."

The Chief Constable, who had never heard of pituitrin, made impressive use of what Lowther has said.

"Is it a non-chemical substance?"

And as the other looked blank:

"Then a chemist probably put it in."

The Superintendent was suitably impressed but decided that he had better keep to what he understood.

"We got them out of his laboratory."

"From a drawer?"

"Off a shelf."

"Not a very surreptitious place."

"My boys nearly missed it. If the sergeant hadn't been addicted to Edgar Allan Poe, he'd never have thought of looking anywhere so obvious."

"You didn't make a mess, I hope!"

"We tidied up."

The Superintendent omitted to say that he had carefully left behind substitute bottles so that the larceny he had effected would not be noticed too quickly.

"When do you say he abstracted this?" displaying one bottle, "and replaced with this?" pointing to the pituitrin.

"Wednesday night."

"Why Wednesday night?"

"Well, sir, it's consistent. The case of twenty bottles was started, according to the doctor, not later than Wednesday. He'd use two a day—they're very small—a syringe-ful or so in each. Allowing for one or two left over from the old one, it's probably that not more than one was used by Wednesday night. At two a day, that would take us to Saturday night or Sunday morning."

"You have to say that he used none of the new case before Wednesday night," interpolated the Chief Constable, "because you want to exclude the possibility that death was entirely due to an omission to apply the stuff on Sunday."

"Yes, Chief, that's one of the difficulties in this case. But I've checked up on it, and the doctor tells me that the

omission of one dose would not prove fatal unless the patient were already on the point of dying"—the Superintendent paused—"which he wasn't on Wednesday night."

"A nice point, Fremantle. But there's something else. He mightn't have worked to order. He might have used a weaker bottle on Friday and a stronger on Saturday."

"Yes, sir, but there'd still be a shortage in his system. And the chopping and changing wouldn't help him—and death in any case would not follow immediately. The increased dose would just fail to keep him alive—not being a double dose."

The Chief pulled at the skin of his neck.

"You think we can take the cause of death for granted?"

"I do."

"I am inclined to agree. Now what about the time factor for interference? I mean the Armiger time factor."

"Well, sir, as we have seen, the stuff probably wasn't accessible to an outsider until Wednesday night. I gather that he kept the sets of bottles stowed away in drawers till he needed them."

"From Monday till Wednesday there was very little chance. When Armiger was in the hotel, either the Judge was in his room, or one of our men was about."

"Have you gone into that?"

"Yes. I think I've exhausted that line of enquiry. But, in any case, Wednesday night's probable. We weren't prepared for the Alert; and the Alert gave him his chance."

The Superintendent produced his notebook, a small volume more sacred to policemen than the bible. In fact, some have been known to take the oath holding it in their hands and believing in it.

"To deal with Wednesday night. Constable Cottrell on duty until nine-fifteen; nine-fifteen, the Alert; nine-fifteen to eleven, Judge in Air-raid Shelter; nine-fifteen to ten-thirty, no constable at door, because we didn't anticipate anything like this and we had too much to do. Ten-thirty, Cottrell back on duty, more or less; eleven

o'clock, Bennett and Hancock escort the old man back. Now, working backwards from that. The waiter (Withers) passed the door a couple of times between ten and half-past. So did other members of the staff (most of them were at work during the second half of the Alert). On the whole, the place was lively from about ten. Also, at ten, we know Armiger was talking to the girl Davenport. She goes off duty at ten."

"And, of course, we think the worst for the next half-hour."

"Quite. Also between ten and eleven there were some lawyers moving about—not uninterested in comforting our female staff, perhaps."

"Don't be nasty, Super. However, it doesn't give him much time, does it?"

"He's got from just before half-past nine until ten, sir."

"You suggest he could do this in half-an-hour? Don't you give him credit for any nerves?"

"He could have slipped in, taken the case to his own room, done the necessary, and brought it back. If somebody got there before he was back, he could deposit it somewhere."

"He wouldn't have the stuff ready to substitute. He wouldn't know there was a raid coming off. He wouldn't know what time he had—how long the raid would last, I mean."

Fremantle was tactfully firm.

"We're saying that he was waiting for his chance, and took his chance."

The Chief Constable was looking more worried and sceptical than ever.

"Further," insinuated Fremantle deferentially, "they don't know how we've whittled down the time in their favour."

The Chief Constable had a spasm of conscience.

"You'll forgive me if I sound pedantic, Superintendent, but you must be aware that the English police do not endeavour to get a conviction at all costs."

The Superintendent bridled.

"Forgive me, Chief, if I give the wrong impression. But why should we tie ourselves down? We're not sure

that he didn't get into the room and stay in—or get out again—some other time, even while Cottrell was on duty.”

“We must assume, Super”—the Chief Constable was relenting a bit—“that they will very quickly get the timing right, by cross-examination and even by our evidence, so far as Cottrell is concerned. We've got to put Cottrell up. They'll find out about the girl themselves; and if they know their business (and if Romilly or Hewitson is in this, they will know their business), then they'll make us a present of the girl as a witness so that we'll have to call her. However, half an hour may be enough. Now, what about Armiger's movements? Could he have done this, and could he have got the stuff home?”

“Yes, sir, I've worked that out. He lives at Little Worsley and works at Knightly's, which, as you know, is roughly half-way between here and Little Worsley. He had to come here to the Tribunal on Monday, but he was working again on Tuesday, Wednesday, Thursday morning (he took the afternoon off—that's very significant).

“The manager will say that he stayed the week at the Dragon. We know why. He wanted to keep in touch with Mr. Romilly about an appeal against Judge Gosling's verdict. But he had another purpose. Also we know that, whenever he went to work from here, he had a fairly large attaché case with him.”

“Big enough to contain these and a syringe, etc.?”

“Quite big enough.”

“Proceed, Super.”

“Well, we don't see him in the hotel on Thursday afternoon. My contention is that he got the bottles from his works, brought them here Tuesday or Wednesday, took the bottle on Thursday morning to work with him, took it home to Little Worsley on Thursday afternoon and came back to the Dragon at night.”

“Bike?” suggested the Chief.

“Bus,” answered Fremantle. “I've got a conductress who thinks she recognizes him.”

“Thinks, Super?”

“I expect she'll be certain at the trial.”

The two men looked at each other hard. The Chief Constable made no comment; but, like most soldiers, he appreciated thoroughness.

After a suitable pause, the Superintendent resumed: "I took the liberty of getting a statement, sir, before we made up our minds to charge anybody."

The Chief looked up sharply.

"I thought he wasn't talking."

"I took the liberty of asking him, casually, if he knew anything about insulin."

"Well?"

"That shook him a bit, and I imagine he isn't easily shaken. He seemed to think quickly, and said—I made a note of it immediately after—'As a matter of fact, I experiment with it. I think I have some at home!'"

"Innocent enough."

"And guilty enough, Major."

The Superintendent tried not to smile as he proceeded: "You see, he isn't employed on insulin research. I've gone into that. If and when we decide to charge him," continued the Superintendent, in the careful manner of one who knows the Judge's rules, "I shall indicate to him, with your approval, that he need not answer any questions, but that if he cares to explain something in his present statement, I shall be glad to know what kind of a container he kept his insulin in . . . and so forth. By that time he'll know more about the state of his own laboratory."

There was a pause, during which Fremantle tapped his notebook, closed it with an air of satisfaction, and put it away.

The Chief was deep in thought.

"That, sir, is the case. The man had the necessary skill, the opportunity, to say nothing of the motive. We've heard a threat, and we've found him with the stuff—can't call it a weapon."

"Well, get it together, Super, I won't say with my blessing. This conscience business is a bit infectious. Incidentally I must have a word with the prosecuting solicitor. How do we stand on that stuff you burgled?"

The Superintendent passed the "you" without comment. He was ready for this.

"As you know, sir," he replied recitatively, "while statements must not be wrongfully obtained, nor entries wrongly effected, yet information obtained in consequence of a wrongfully admitted statement or other wrongful act is admissible. There's a case on that."

"I think I know it," replied the Chief. "You'd better get your warrant."

"I wish," he added to himself, "that I had a vocational conscience."

It fell to Lumley to be invited to issue a warrant for Armiger's arrest on a charge of murder. Successfully concealing any feeling he may have had of pleasure or relief, and with many a "very deplorable" and more than one "are you quite certain, Superintendent?" he allowed himself to be persuaded. After which he went home and, after some thought, carefully hid the conscientious objector's book that Healey had given him.

11

PREPARATION FOR BATTLE

THE pompous old gentleman who was ushered in to see Romilly was immediately recognized by the latter as Hubert Brennan of Carslake & Brennan, the leading solicitors in Daneford. Mr. Brennan, whose work Romilly regarded as very desirable, but who would not give Romilly any work failing the express and obstinate instructions of a client, approached Romilly with all the humility and obsequiousness that a man can afford who knows himself to be earning several times as much as the other. With the solicitor was Helen Davenport, exceedingly well dressed, and looking so attractive as to give Romilly material for reflections not entirely germane to the issue.

The solicitor scattered his gathering thoughts by proceeding to business with the rapidity of the experienced.

"As you may be aware, Mr. Romilly, my client, Claude Armiger, was arrested this morning on a charge of murder, and will be brought before the magistrates this afternoon with a view to his being remanded for a week in custody."

Romilly showed polite surprise, but the exact degree of astonishment that he had felt on hearing, half-an-hour before, of this development, in view of his remembered conversation with the Chief Constable, could not be evident to the newcomers.

"Can't do anything about that," murmured Romilly.

"No, sir," replied the solicitor deferentially. "My partner and I are satisfied that the course is unexceptionable. But we are anxious, as early as possible, to retain your services for the defence. I have not been able to get in touch with your clerk, but I ask your indulgence in that regard, and hope you will accept instructions. You are, I think, no stranger to our firm."

"Yes, your firm knows me, and I know your client—and I am interested in this case, and I shall be very glad to act. You'll want me to attend on the committal proceedings, I expect?"

"Precisely, and to help us in conference both with and without the lay client. We may have to see him in his—er—cell."

"You are not leaving him in prison, are you?"

This interruption made the two lawyers suddenly aware of the continued presence of Miss Davenport. Mr. Brennan bowed courteously towards Romilly.

"We can't do anything about that, Miss Davenport."

"You haven't mentioned whether he's guilty or not."

"My dear young lady" (in the presence of the solicitor, Romilly was irreproachably formal—she understood this), "naturally we assume that any man charged with so grave a charge as this is innocent. On the other hand, there is no reason to suppose that the police would have arrested Mr. Armiger, or even been able to get a warrant for his arrest, unless they had evidence of a case to answer. Our answer is what interests us, because it's vital. Frankly, it isn't very vital whether or not he stays in gaol. It

would be the devil's own business to get him out at the moment."

The girl subsided, unhappy, but not unimpressed, and Brennan proceeded with an account of what evidence he had collected, and in such a way as to prove that, though expensive, he was good.

Romilly listened particularly carefully to an account of times that Brennan had managed to extract (by way of apology) from the Chief Constable.

At the end he looked up and said, with some decision: "Is Miss Davenport your client?"

"One of our clients——"

The girl interrupted: "I've saved up a bit of money, Mr. Romilly. I want to use it for Claude's defence."

Romilly looked at her kindly.

"You're going to help us in another way as well. You're going to be a witness for the prosecution."

"For the prosecution?" almost shouted the girl.

Brennan leaned back and sighed appreciatively.

"Very good, Mr. Romilly, very, very good—a deep move——"

Romilly explained to the girl that by so doing he could get in favourable evidence unimpeachably, and also without losing a right of reply.

"As to that, however," commented Brennan, "the Attorney's against us—he'll have the reply. He's leading Hewitson."

Romilly was swallowing this, as Brennan continued:

"Nevertheless, your idea's admirable, Mr. Romilly. Very profound. As you point out, Mr. Romilly, the evidence will be theirs—they can't cross-examine."

"And we can."

"Excellent, Mr. Romilly. May I say that my firm has always regarded you as a profound man?"

Romilly was thinking about Hewitson.

"Not as profound as some people. Not as profound as I thought I was. But profounder than I was before."

With which mysterious incantation, and with some shaking of hands, he ushered his clients out.

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Romilly took an early opportunity of seeing Hewitson. He was disturbed as to how much had been confided in the other. Discovering him in the lounge: "We're arrested, Hewitson. I had hoped that you'd be with me; but I hear you're against."

Hewitson showed gentlemanly regret.

"Should have been delighted, old boy; but I wasn't committed, and I couldn't refuse a brief from the Director if he wanted me. Naturally, any help I can give you . . . of course, you know that."

Romilly knew the exact meaning of that.

"Incidentally, Romilly, to be quite frank" (Romilly shuddered imperceptibly), "I'd rather prosecute than defend in murder—less responsibility."

Romilly reacted strongly.

"Show me some intellectual honesty, Hewitson. You know murder's pie."

Seeing on Hewitson's face the fish-like expression that the Bar adopts when it is offended and doesn't know what to say, he relented a little and elaborated: "You can't go wrong in murder. The court does it. Murder's one case where the worse the counsel, the better for the prisoner."

The other accepted the escape from seriousness.

"I don't quite agree. I think you're being modest. But I expect you'll have less work to do here than you would have fighting for a few quid in a County Court. Still, I expect you'd be better satisfied with Brennan's civil."

"Yes, but he won't give me that. Money depends on that, not life."

"Life's less expensive, I agree."

"I expect this is all an illustration of the maxim *de minimis non curat lex*."

A week later Hewitson conducted the police-court proceedings for the Crown. Romilly attended on behalf of the prisoner, more with a view to learning what the case was about than with any intention of defending vigorously at this stage. Since committal is difficult to oppose (for the magistrate will hardly take a responsibility that he

thinks he can leave to a Judge of Assize), and since counsel are taught not to leap before they come to a stile, the fight for the life or liberty of a prisoner usually takes place in the last ditch—in front of the jury-box. The expense of this spectacular undertaking only concerns the prisoner—not the committing magistrate.

It was unfortunate for Armiger—as it is unfortunate for any prisoner—that the police were able to present not only to the magistrates, but also to the public (which included any future jury), a fairly coherent and uncontradicted case, being, in fact, all the evidence that was later to be used by the prosecution at the trial.

At this stage it would have been bad tactics to cross-examine. The failure to cross-examine, however, especially the failure to consider what the examining magistrate, Mr. Renshaw, rightly thought was important (namely, the death certificate, and the cause of death), gave the impression that the defence thought there was a case to answer; and that so difficult that it was not advisable to expose any of the materials at the disposal of the defence.

Romilly also refused to ask any questions bearing on the Superintendent's method of getting evidence.

When Armiger suggested the attack Romilly said: "Too early, my boy—in any case, it's usually the guilty who attack the police."

In the circumstances committal was inevitable.

Only at the end of the evidence did Romilly rise; and then he spoke unaggressively:

"Does your Worship take the view that there is a case to answer?"

"I am inclined to think so."

The Clerk of the Court, a youngish, sandy-haired man, well experienced in the technicalities, and in nothing else, was standing on his seat, so as to reach up to the Bench, and was whispering to the magistrate.

The clerk turned to Romilly.

"Have you some legal submission, Mr. Romilly, or is it a question of evidence?"

Romilly continued to address the Bench, though taking account of the interruption.

"Leaving the obvious legal point for a moment, are

you, sir, satisfied that there is evidence of a cause of death traceable directly to the prisoner, and to the prisoner only?"

"We do think that, Mr. Romilly," answered the clerk, who had not analysed the evidence, but who was determined not to let his Bench dispose, at so early a stage, of the only *cause célèbre* Daneford had produced in his decade. "On the present uncontradicted evidence there is a clear demonstration that the prisoner interfered with the Judge's insulin."

Romilly exchanged a quiet word with Brennan, and prepared to sit down.

"You're not taking any legal point, Mr. Romilly?" asked the magistrate anxiously.

"I am not very happy about what is charged. It is not poisoning. We haven't got the advantage of a coroner's finding."

Romilly grunted this out, having been disinclined to expose, so early, so good a point.

Hewitson had risen to his feet.

"With the greatest respect, sir, it is poisoning."

Romilly saw the one chance of a defective indictment disappearing, and said quite firmly: "It is not poisoning. Look at your Justice's Manual, Mr. Hewitson."

"It's deprivation of the means of living," said the clerk dogmatically.

Nobody had asked the medical witnesses any questions to challenge the suggestion that the Judge would have lived had nobody interfered with the insulin. On the other hand, the causation was less clear and the intention was less clear than if a child had been kept on bread and water and eventually died.

Romilly did not want to debate this point at so early a stage. He hedged.

"Is there such a charge?"

Romilly put the question *faute de mieux*.

"Well, you can always move to quash the indictment, Mr. Romilly," replied the clerk, confident now.

The clerk turned to the Bench. After a moment of fairly vigorous whispering by the clerk Mr. Renshaw pronounced: "I rule that there is a case to answer."

"If that is the position," said Romilly, "it would be a convenience to the prisoner if the prosecution could call now a witness whom otherwise they may have to tender as additional evidence—I have mentioned this to my friend."

Hewitson was on his feet expressing his sole desire to help his learned friend; and Helen Davenport quickly gave evidence that on the night of the Wednesday immediately preceding the death of the Judge she had seen the prisoner in the hotel, and he appeared normal.

"What time?" asked Hewitson.

"About ten," replied the girl.

That easy answer, capable of being elaborated and interpreted at will, was the end product of a long conference that she had suffered with Romilly and Brennan.

The charge was then read in language calculated to prevent the prisoner saying anything, even if he wanted to, and Armiger, who throughout the proceedings had sat impassive, now pleaded "Not guilty" in a voice calculated to sound as indifferent as possible, and was committed in custody to trial at the next Daneford Assize.

Mr. Brennan said, "Thank you, Mr. Romilly."

Miss Davenport was too upset to wonder what anybody had done to justify the expense so far, or to realize that doing nothing is sufficiently difficult to be worth paying for.

Hewitson was saying to Romilly, "We'll meet at Philippi."

"Never go there," replied the other.

PART II

12

PHILIPPI AND A PHILIPPIC

IF the sale of gallery seats at murder trials ever becomes a legitimate business in England, instead of (as now) an occasional system of private corruption for the benefit of some door-keepers, the entrepreneurs will find their most profitable engagements to be those in which the corpses are corpses of distinction. Alleged murder by an aristocrat or person of importance (that is to say, news value) is not so popular, because those who have time to go feel guilty of gloating. When, however, as at Daneford Assizes, the alleged murderer is a social non-entity, but the victim is a lion from under the throne, people can satisfy their morbid curiosity under the pretence of doing honour to established institutions.

From the point of view of the prisoner, any added solemnity, in an Assize already solemn by virtue of its impersonal retributive purpose, any awesomeness additional to that conjured by the presence of red robes in an ancient Guildhall, constitutes protection rather than oppression. The heightened dignity of the trial enhances exactitude. Nor could it be thought here that Mr. Justice Harwood was likely to disturb the scales of justice in favour of the Crown simply because the victim was in some sense a colleague. In fact, in every sense that mattered, Mr. Justice Harwood and the late Judge Gosling were not colleagues. Not only was there the difference between Civil servant and Royal patentee (only one County Court Judge ever became a High Court Judge), but this Judge, a great lawyer who loved the law, had found on the High Court bench the reward (though not the highest possible prize) of a career which is usually opened to other talents than the legal, and could feel that in every decision he gave he was fulfilling his real

purpose in life. To the other a minor judicial appointment had come as a sinecure, grudgingly thrown to a well-connected party servant. To him every issue had been trivial (only the lives and fortunes of the poor being at stake), every trial a frustration, and an opportunity to vent, in spleen, the bitterness accumulated during barren years. The only fair trial in which Judge Gosling participated was the trial of his own alleged murderer.

Certainly the presiding Judge here was judicial. Unlike some of his brethren on Assize, he did not regard himself as holidaying in a circuit town. The case to him was important, as were all cases. Himself possessed of a conscience, he did not despise or hate conscientious objectors. As he turned his thin, scholarly face (of which the handsomest feature, the spacious forehead, was half concealed by his wig) towards the as yet unsworn jurors, he wondered whether it was possible to say that any conscientious objector, particularly one accused of what amounted in the public mind to blasphemy, could possibly be tried by a jury of his peers. At least, decided the Judge, they would not condemn him for want of direction. Also he had it in mind to be more than cautious here, because he felt that he knew too much about the atmosphere of the crime.

While the Judge was reflecting, Armiger had been ushered into the dock by two friendly-looking policemen (civilized police are always well disposed towards malefactors once they are caught) and was having a last word with his counsel. In this setting he looked innocuous and unimpressive—almost conventional, and, like most accused, utterly out of place.

"All I want, Mr. Romilly, is a fair trial. Given impartiality, I know I have nothing to fear."

The bubble of self-dramatization was quickly pricked.

"Forget it," said Romilly, smiling (he looked younger and happier in wig and gown). "We don't want impartiality. We want all the partiality we can get. In this Judge," he added, as he opened a vast note-book, "I think we've got it."

Which was not quite correct. Certainly Mr. Justice Harwood was different, in degree, kind and quality, from those Judges of whom it is reported that when counsel in the Court of Appeal says, "This is an appeal from Mr. Justice Firm or Mr. Justice Feeble," the court immediately stops him and calls upon the respondent to justify the verdict. On the other hand, on a difficult murder charge a weak, or muddle-headed, judge would solve all his problems by directing an acquittal. Mr. Justice Harwood was unlikely to do that, and was equally unlikely to leave grounds for appeal.

As, in the crime alleged, the method—deprivation of the means of life—was classified, for want of exactitude, with poisoning, the prosecution was conducted by Sir Montague Dovecot, His Majesty's Attorney-General, a florid, thick-set man in his late forties, but prematurely bald and preternaturally fat, yet with the unlined face that is so often found among the successful in the learned professions. His class of legal talents had been well described, by the sharpest of English wits a century ago, as the ability to illustrate the obvious, elaborate the self-evident, expatiate on the commonplace. A pleasant man, not prone to speculation, but clear-minded within his limits, he achieved an air of tact and fairness, by dint of slow, well-balanced speech, which appeared even better balanced on account of his habit of judicial nodding, in apparent agreement even when he disagreed. And, withal, he exuded the benevolence that can be expected in a lucrative office; for he and his colleague (the Solicitor-General) are the only two of His Majesty's servants who are allowed to earn a considerable fortune as a collateral perquisite of their office. Among other things, one or both of them appear regularly in court at high fees on all Revenue matters and in all serious crime of State importance—which, traditionally, includes homicide by poisoning. Sir Montague's presence was not, however, calculated to embarrass the defence, although he enjoyed the tactical advantage, not enjoyed by other counsel, of the right to reply even where the accused's counsel called

no evidence other than his client. Quite conscientiously he was determined that he was there to see justice done—and appear to be done.

Sitting behind Sir Montague, and also equipped with a formidable notebook, was Hewitson, fulfilling those combined functions of message-boy, amanuensis, and managing director that are only united in junior counsel. His to write everything down laboriously, yet so to keep his mind on the proceedings that he would have to write as little as possible that was unfavourable to his case. Similar would be the position of a producer responsible for a temperamental artist whose function is not only to misquote the lines, but to compose many of them as he proceeds. Already Hewitson looked as if he was in action, hawk-like, prepared to pounce and pull his leader's gown on the least provocation. An unfledged eagle this, a determined, able, humourless, implacable man, clear-headed, and clearer because he harboured no metaphysic in his mind and no music in his soul. Formidable, of a type which in success produces the Birkenheads, the eagles of the law, and in failure the Goslings; never the Burkes and the Sheridans. As an advocate and lawyer, Romilly still looked down on him, but was old enough not to deny that he was a powerful antagonist, than whom, in this case, anybody would be more desirable to the defence. The thought occurred to Romilly that, given a different education, Hewitson might have developed the mentality of Armiger, but probably not the same claim to conscience.

The court was crowded to overflowing as the charge was read, sounding the more terrible when solemnly declaimed from parchment, by a deep-voiced man in robes. How different the Clerk of Assize looked now from his appearance at circuit messes. At least one watcher conjectured that it was typical of England that even the bibulous could don formality.

"How say you, Claude Armiger? Are you guilty or not guilty?" The ancient simplicity of the words was striking.

To the spectators this was Judgment Day. To Armiger

and his counsel there was no reality in either the reading of the charge or the panelling of the jury; and nothing that took place seemed to refer to their world until the Clerk of the Court finally sat down, and Sir Montague Dovecot rose and commenced to speak.

Sir Montague's opening speech was a model of unsentimental fairness—so fair as, eventually, to make the jury think that too many concessions were being made to the defence.

The jury at this stage was still a nondescript collection of nonentities, full of excitement and entirely without concentration. Part, at least, of the function of the orator was to make the jury conscious of their function, and so to develop their listening minds that, at the end of his speech, there would be among them certain degrees of clarity and determination which would enable some of them to lead the others in the search for a verdict.

The charge, said Sir Montague, was murder, the unlawful killing of one of His Majesty's subjects by another of sound mind and with malice aforethought. In this case the victim was a man of great importance in the community—a Judge, Chairman of Magistrates, and, as they would hear, the President of a Conscientious Objector's Tribunal. But the victim's status or function did not add one jot or tittle to the heinous nature of the crime. Nor—and this was important, and in this His Lordship would undoubtedly direct them in the same tenor (His Lordship and counsel were already nodding at each other gravely and sagely)—would they allow their minds to be in the least degree influenced (one way or another, he added as an after-thought, and the Judge nodded approvingly) by the personality of the man who was alleged to have been murdered. They, the jury, were not called upon to feel any indignation, or to avenge anybody. They must concentrate on two main questions, and two only: had Judge Gosling been murdered? If so—if they found that he had—then was, or was not, the murder committed by the accused? Those questions must

be determined according to the evidence, on a strict interpretation of the evidence, and that did not include any consideration at all of the gravity of the community's loss. They must exclude that consideration from their minds. (It appeared to Romilly, looking at the collection of mixed tradesmen and housewives in the jury-box, that the Attorney had, against his will, completely influenced their minds in the direction opposite to his intention.) They must also exclude from their minds, except as an accidental circumstance, the personality and opinions of the accused. (On the front row of the jury-box a man with the complacent piglike face that attaches to the smoother kind of middle-class merchant—he was, in fact, what he did not look, a combination of hard-drinking stockbroker's clerk and lay preacher—was saying, *sotto voce*, "A Communist, of course," in the tone of one who had made up his mind. He was determined to become foreman of the jury, and knew that the way to do it was to be dogmatic. The Attorney-General, however, had been made rather undogmatic by political events. He was making no reference to Communism.) The accused was a conscientious objector, or said he was a conscientious objector—let it be assumed that he was—and that, they would hear, was relevant to the alleged motive for the crime. (Most listeners were conscious of some confusion of thought here, and the Attorney was conscious of it too, for he hastened to simplify. Romilly felt Armiger tugging at his gown and ignored him.) He would explain the motive later. Meanwhile they must be very careful not to be influenced strongly by the fact that the man said he was a conscientious objector. They may think that if the case against him was proved, then he was not a very conscientious objector to violence and to the taking of human life. But if they accepted the statement, his own representation, that he was a conscientious objector, they must not be unfair to him on that account. (Conscious of an undiplomatic remark, he corrected himself.) They were not entitled to be unfair to anybody, or think adversely, at least in the course of this case, of any conscientious objector. The law of the country

recognized, and Parliament in its wisdom had provided for, the rights of conscience. We were fighting for freedom of conscience, among other freedoms. The law had provided machinery by which the conscience of a person could be enquired into. Tribunals were set up. One such Tribunal was the background of this case, and might be said to have furnished the motive, or the occasion for the motive, of the crime alleged. However that might be, whatever views the jury might have individually or collectively on the wisdom or unwisdom of conscientious objection, they would not let that influence them to the detriment of the accused. The Attorney and the Judge nodded sympathetically to each other, and the jury sat back, having made up its own mind on the point, for juries very rarely need any guidance on where to be prejudiced.

The Attorney gave, at this stage, a precise series of dates, mentioning as essential: first that Judge Gosling had sat on the Tribunal on the Monday. This was followed by an aerial "incident" on the Wednesday, and his death the following Sunday. That death, said the Attorney, was what they were enquiring into, and it would be convenient to deal with the conscientious objection first; as earlier in time and as the circumstances of motive. Strictly speaking, motive did not require to be proved; but it was customary in trials of murder to prove a motive, if one existed. Here the relations between the accused and his alleged victim were important, because they showed the state of mind of the accused towards the late Judge Gosling; showed a disposition on the part of one to use violence towards the other; revealed one attempt to injure which in his submission (he looked enquiringly to Romilly, as if expecting an objection, which Romilly, being satisfied of the correctness of the Attorney's legal position, did not make) constituted evidence of malice, if evidence was required; of an intent to do harm forming in the man's mind, and of motive, in this sense that the accused clearly entertained, rightly or wrongly, a grievance against his alleged victim sufficiently strong to stimulate him to at

least one display of violence. And the Attorney proceeded to describe to the jury the system of Objector's Tribunals, the unsuccessful application to the Tribunal by the accused, and what happened on the rejection of the application. The Attorney's description of the throwing of the book was accurate enough, but, both to Armiger and to Romilly, seemed very unreal, almost part of something else, which of course was what the Attorney conceived it to be. So are the least purposive, least characteristic, acts unintentionally misinterpreted in the light of a different conception of the context.

The Judge was interested.

"Nobody has ever thrown anything at me except vindictive glances. But in the old days, when manners were rougher, many a man was subjected to severe penalties of a barbarous kind for throwing things at Judges."

The Attorney mentioned the instance, in modern times, which had occasioned a classic repartee. In the days of the Vice-Chancellors an aggrieved litigant threw an egg at Vice-Chancellor Malins; and, as he dodged it, that learned gentleman remarked, "Surely that was meant for my brother Bacon."

"That story," said the Judge, "has, in these days of scarcity, as antiquarian a flavour as that egg undoubtedly possessed."

Not wishing to invest the proceedings with too much levity (some spectators being tactless enough to laugh), the Attorney apologized to the jury for introducing an anecdote into an inquiry of this gravity, and proceeded to discuss the less amusing evidence of the alleged act or acts which constituted the murder proper. First some words were important. At the time of the book-throwing Armiger had hurled at the Judge the insult, additional to the injury, the epithet "sanctimonious diabetic". "You sanctimonious old diabetic." Nobody had any reason to suppose that the adjective in that vituperative epithet was well chosen, but the noun expressed an unfortunate fact. Judge Gosling suffered from diabetes. And, continued the Attorney heavily and deliberately, the accused knew of that infirmity on the part of his alleged victim. He

knew that the Judge suffered from diabetes. Moreover, the accused being, according to his own statement (which the Attorney consulted cautiously), a student of organic chemistry, had therefore more opportunity of knowing the characteristics, and the treatment, of Judge Gosling's disease than would fall to the average man in the street.

Let the jury also remember some other words—"You sanctimonious old diabetic, I'll do you in." (Armiger was protesting to Romilly that this was misrepresentation. Romilly quieted him. The jury noticed the by-play.) "I'll do you in," means, in well-known, but vulgar, colloquialism, "I'll kill you."

"It's not vulgar, Sir Montague," interrupted the Judge. "It's literal translation from the Latin—*interficio*, I do in—*i.e.* to kill."

The Attorney expressed deep gratitude, and supported by indicating that many slang phrases had good literary justification; mentioned (with a flash of the readiness that comes through platform experience) that they were hearing how, on this occasion, Judge Gosling escaped from injury "by the skin of his teeth"—which was a good Biblical phrase.

But, declared the Attorney, now frowning again, in what ensued there was no justification by humour. For, less than a week after the utterance of this threat and the hurling of the book, Judge Gosling died: in the submission of the prosecution was killed: was "done in" if one liked (this in a tone that froze the sources of laughter)—was murdered.

Less than a week after this incident before the Tribunal, the Judge was found dying—dying, they would hear, from the lack of a substance essential to preserve the flame of his life; dying in circumstances which, at first sight, looked like natural death, and which only accident, the intelligent guess of a very intelligent man, brought into play by the persistence of the Daneford police force—under their admirable Chief Constable and Superintendent—only accident, persistence, and genius combined to reveal as murder.

In the suggestion of the prosecution, this substance was

taken from the murdered man by the prisoner, who had the skill to do it (Armiger was tugging away at Romilly's gown), who had a grievance (whether just or unjust did not matter—but undoubtedly unjust) against Judge Gosling; who, moreover, had reason to fear that the Judge would bring him to book for his grave contempt of court. (Romilly took advantage of a pause in order to ask Armiger to leave his gown alone.)

In the suggestion of the prosecution, said the Attorney, the prisoner had not only motive, but every opportunity for carrying out his plan against the Judge's life (or health, perhaps; it did not matter which in the first instance). If he wished to do the Judge grievous bodily harm (in the course of which the causing of death would, of course, be murder)—if he wanted to kill, he had the opportunity, because (the Attorney underlined the words very carefully) for no apparent reason he *spent every night of the week in question in the very same hotel*.

(The jury, who could not know the reason for this, accepted the tonal underlining. Very sinister.)

At this point a plan of the hotel was produced; gruntingly approved by Romilly; and copies were distributed to all and sundry. The various bedrooms were shown. The Judge was on the first bedroom floor and the prisoner was living on the very next floor above; (the residence of counsel and Sir Horace was tactfully not mentioned); and, though the Judge enjoyed the great protection afforded by the Daneford police force, and though the hotel was well organized, what, asked the Attorney, was to prevent some opportunity occurring for the prisoner to carry out his plan?

They would hear, later, that there was a very clear opportunity. They would hear a mass of evidence on all aspects of the case. But already they must realize that the man had opportunity to do harm by interference with the Judge's medicines, which he kept, all unsuspectingly, in his bedroom. These were interfered with in such a way as to cause death.

But before going into that it was necessary that the

jury be troubled with a little, but very fascinating little, chapter of modern science.

The jury all knew the word diabetes. He hoped they had no reason to know it well. The treatment of diabetes, continued the Attorney, in language that grew more eloquent as the jury grew more attentive, was the prize of one of the greatest intellectual adventures of modern times. Nearly two centuries ago a German scientist named Langerhans, exploring the region of the animal digestive system which is called the pancreas, discovered areas which became discoloured, or less pigmented, in the condition which we now call diabetes. Two centuries later a brilliant Canadian doctor (incidentally only recently and tragically deceased in the service of the Empire), carrying further a process of exploration which had gone slowly, ever so slowly, forward since the days of Langerhans, had been able to isolate the essential products of those "islets", as they were called, and found the secretion which made all the difference to animal metabolism—physical and chemical changes in the body—and which he demonstrated to be a principle of synthesis, or a catalyst: more accurately, the metabolic agent of glucose utilization and storage—as it were, a bodily fuel control—which enabled the carbohydrates and proteins to burn together in the body system. Without such utilization of carbohydrates the metabolism of fats—the changing of matter into nutriment—would be abnormal. Without this principle of combustion it would be difficult for potentially nutritive substances to burn in the fire of the heat-producing carbohydrates so as to support animate life as we know it. The substance which worked the miracle was discovered by the late Dr. Banting and his assistant, a man named Best.

As the substance was extracted from that area of the pancreas called the "islets of Langerhans" it was called by its discoverers insulin—from the word insula (which means, in Latin, an island), and not, as the vulgar suppose, from the name of an American capitalist. Insulin was a mobile fluid that people injected into themselves subcutaneously with the aid of a syringe. It was sold and

contained, usually, in very small rubber-capped bottles. (The Attorney displayed one and distributed several.) This substance was used by Judge Gosling—and they would hear how he was deprived of it.

It was a difficult substance to obtain. People who suffered from the disease, and their doctors, obtained it these days through special channels. A chemist might obtain it; and the jury must consider that possibility. But if a chemist was found in possession of some insulin which was not contained in the usual bottle, it was hard to explain how he got it unless from a bottle that he had broken. And this might be somebody else's bottle. It might be his own. The two possibilities must be considered. The fact, of which these possibilities were possible explanations, was the discovery by the police of insulin, and of pituitrin—they would hear more of that—in the accused's laboratory at his home, not very distant from Daneford. And they would hear evidence that he was in the neighbourhood of his home—the "rooms" where he lived—between the day on which it was suggested the Judge's bottles were tampered with and the actual death of the Judge. In the accused's laboratory there was found insulin in an ordinary round medicine bottle. (This was produced.) It would not have been sold that way or in such a receptacle. The accused had shown some surprise when confronted with it—later he said that he had some for experimental purposes. This may well be an afterthought. (Conscious that the Judge was breathing rather stertorously at this possible suggestion that the prisoner should have given an explanation, the Attorney moved a bit faster.)

The accused gave a fairly circumstantial account of how he got it from a laboratory some weeks before; but that was open to the criticism that the substance would not keep for longer than a week in the kind of container in which it was found. He said, doubtless knowing this, that he had recently broken the container (a small ampoule or airtight bottle was the normal) and thrown it away. There was no apparent reason why he should do so; there was no trace in the building where he lived of a

broken bottle. There was no reason for him to break the bottle at a time later than his experiments. For that matter, there was no good reason for him to keep the stuff at all.

Moreover, he had been asked what experiments he had performed, or been making, and had given no details. They would hear that he was not employed in that branch of research. It was not his duty to give an explanation, but once he had mentioned experiments, the police were entitled to ask for details. (Romilly was on the point of rising, but the Attorney anticipated his move.) Let the jury not attach too much importance to that only. But in general let them concentrate on the presence of the insulin. If it was valuable, why was it kept in a bottle that was not air-tight? If the jury thought that it would keep the better that way, they were entitled to treat the explanation as satisfactory.

"You don't regard it as satisfactory, do you, Mr. Attorney?"

The Judge had in mind the classic instance of a summing up in which the Judge had suggested to the jury that if they thought the prisoner had broken into the house in order to get a night's sleep, had walked on the roof in order to breathe the air before turning in, and had done so in his stockinged feet out of consideration for the sleepers within, then they would acquit him of an attempt to steal. And the jury had acquitted him.

"My case, my Lord, involves the description of the explanation offered as fantastic."

The prosecution had a much easier, in his opinion much more probable, and (the jury might think) a convincing, explanation of the source of the loose insulin. The Attorney lowered his voice and spoke more clearly. The prosecution alleged that Judge Gosling had died through being deprived of insulin. (He explained the Judge's use of ampoules and described them again.) The prosecution alleged that some of the Judge's bottles had been milked, as it were, of insulin, and a colourable dilution left behind. The prosecution alleged that this had been done by a man with a scientific mind and with hands enskilled in

scientific experiment. The prosecution alleged that the prisoner had done this, and that the insulin found in his rooms was the insulin so dexterously extracted from the Judge's ampoules, and so dexterously replaced with a substitute. That was the prosecution's explanation of the insulin in the medicine bottle. Compared with it, any alternative explanation seemed to evaporate.

He had used the word fantastic. There was a further reason for this. The explanation offered by the prisoner was fantastic when taken in conjunction with another fact. The police found in the same laboratory where they found the insulin, pituitrin. He must tell them more about pituitrin. Here, too, was a fascinating chapter of science. The same period of organic chemistry that had been inaugurated by the discovery of the secretions of the pancreas had enriched science with the discovery of other analogous "ductless" glands and their secretions. They had heard of adrenalin, which, being extracted from a gland near the kidneys, could be used for many purposes, from the relief of asthma to the drugging of German soldiers with "ductless courage". They had probably heard of thyroid extract—from the thyroid gland—which correct defects of growth. And, similarly, but less well outside laboratories (the addition was mischievous), the chemist had at his disposal pituitrin, the extract from the pituitary gland, a gland situated just under the brain and influencing—according to modern scientists—the sugar content of the blood. It was indeed—this gland—another and mysterious function in diabetes. Just as the cessation of the flow from the pancreas caused diabetes, so an increase in the flow from the pituitary gland also caused a diabetic condition. Hence so-called "nervous diabetes", as distinct from the diabetes of bad diet. It followed that an injection of pituitrin would counteract the pancreas, and would counteract insulin. And consequently (here the Attorney spoke more deliberately, so as to make the jury accept something they did not completely understand) an insertion of pituitrin into a bottle of insulin would neutralize the insulin to any controllable degree.

They would hear more about pituitrin. They would have to listen to experts explaining how they inferred its existence. And the jury would have to decide whether or not pituitrin was the substance found in the bottles mixed with the insulin.

For present purposes he would assume that its presence could be inferred if it existed—and would only say that in the laboratory of the accused pituitrin was actually found—pituitrin, which eminent scientists would say was the substance with which the insulin had been polluted. Pituitrin, a harmless enough substance in a chemist's laboratory—indeed a beneficial one—but in this case just the type of substance that might neutralize insulin without being noticed, because insulin was injected—not taken in liquid doses. More important, it was fatal to insulin as a substance. Where did the accused get pituitrin from? And why have it? Also for experimental purposes? They would hear that his work did not involve pituitrin.

Let the jury add these facts together. (The Attorney, in saying this, was saying something permissible; but the jury were not critical enough to see that he was also adding two unconvincing things together to make something convincing—a process at once legitimate and dangerous—the addition of almost nothing and almost nothing to make something; the most fascinating form of circumstantial evidence, and not the easiest to belittle. Needless to say, the jury was swallowing the Attorney's argument whole.)

The point, expounded the Attorney, was that Judge Gosling died precisely because somebody had tampered with his insulin, imperceptibly. If they accepted certain evidence, someone had interpolated, into the insulin, pituitrin. Who had done this? Who could do it better than the man who understood these things?

And there was a further point. They would hear evidence that the insulin was not uniformly abstracted or neutralized. Each bottle was not emptied of insulin content.

From one end—and, they might induce, from the other

end also—there was gradual diminution of strength. In the prosecution's suggestion this was to make the substitution indiscernible, yet any diminution might be enough to cause the death unless it was immediately compensated by an extra dose. In the Attorney's submission, there was here evidence at least consistent with the prosecution's suggestion that this was a mischief done by a master hand.

(The melodramatic phrase sank into the jury; and the Attorney paused, in order to let them savour it; and he contrived to make play with his papers so as to give them sufficient time to metabolize the argument into the stuff of conviction. Romilly, who was composing mentally his own closing speech for the defence along lines suggested by the Attorney's opening attack, knew that the jury was absorbing the argument, knew how good it was for all its weaknesses, knew that any direct answer could hardly stand up against it, and began for the first time to lose confidence in the outflanking movement on which he now had to rely in order to win the day. Armiger had given up pulling at his gown: even that gave him no comfort. The Attorney resumed the attack from another direction.)

The jury must remember that they were trying a man on the most serious possible charge, a charge with the most serious possible consequences. The prisoner was accused of killing Judge Gosling. The evidence against him was not direct. Murder was rarely committed in the presence of onlookers. Particularly, an act in the nature of poisoning—or deprivation in circumstances such as these—was unlikely to be seen by anybody, and was, in its nature, surreptitious, a deed of darkness. The evidence of such an act was usually what is called circumstantial evidence. That was a term that incurred a good deal of unnecessary and unjustified abuse. The learned Judge would probably direct them that circumstantial evidence could be more reliable at times than direct evidence, because facts cannot lie. (To Romilly, who knew more than the Attorney about the facts of this case, and about facts as they appeared when treated by the late Judge

Gosling, this opinion of the Attorney's was rich in irony.) But they must understand what was meant by circumstantial evidence and how it operated. Briefly it was induction from facts which they found to be true, in turn directly, inferentially or by induction. In this case he would be doing no injustice to the defence if he invited the jury to draw two separate conclusions, one easier than the other. The first, and easier, that he asked them to draw was an induction from the medical evidence, the details of which he did not anticipate because they would soon be hearing evidence fresh from the mouths of experts. Those experts would say briefly that the Judge's death was consistent with his deprivation of insulin. That was hardly enough by itself; but let them consider the facts. They were fortunate enough to have found by the bedside of the Judge bottles which did not contain proper insulin, but which clearly should have contained insulin, and which contained instead a useless substance (harmless in itself, but harmful here).

There were empty ones, too. The empty ones had recently been used by the Judge. Could they have been all right? Part of this first conclusion was that the now empty bottles had been milked in the same manner as the companion bottles, had been used by the Judge; and he had been deprived accordingly. It did not matter whether they had been emptied, or diminished as to their content gradually, progressively, like those at the other end. That would be important when they came to consider the skill of the operator who had effected this thing; but for the purposes of the first conclusion all they had to find was that there was some shortage in the bottles that had been used, and that that shortage had caused the death. If that shortage existed, they could be sure it was improper, for, to clinch the matter, an expert chemist from the source of supply of the bottles would say that the bottles must have been interfered with after being unpacked. But that really related to the second stage. The first and simple process of what he had described as induction, was to find that Judge Gosling died through being deprived of insulin—through its being

abstracted from the bottles he used. Everything was consistent with that; and in his submission they were entitled to say that that was the cause of his death, just as a doctor might say with every confidence that a patient dying in the course of an attack of pneumonia had died on account of the pneumonia.

As the Judge looked up speculatively, the Attorney endeavoured to improve the analogy by argument. Most death certificates involved the assumption that the probable account of death was the right one, even if it was not mathematically certain. People acted on that. Here he felt confident in inviting the jury to find that the cause of death was the shortage of insulin. He added that the jury might well think that if this was mediated or brought about by somebody's act, then that act constituted a peculiarly ingenious and diabolic murder.

This was too much for Romilly.

"My Lord, I hate to interrupt my learned friend, who so far has been scrupulously fair, but I must point out that every crime that cannot be proved against the alleged perpetrator shows the latter to be an ingenious and diabolic person."

Romilly was not struck by lightning, as the more timid in the gallery expected. The Attorney was graciousness and humility incarnate. He was deeply obliged to his learned friend for preventing him from saying something that might be construed—misconstrued—as prejudicial to the defence. Then, with the magnanimity that springs from confidence, he invited the jury to expunge all reference to ingenuity and devilishness from their minds. The majority, for whom Romilly's irony was a little too lofty, had nothing in its mind to expunge. But two or three of the members looked as if they thought that the defence had executed a diabolic stroke. The first conclusion, then, resumed the Attorney, was as to the cause of death. That was part of the circumstantial evidence. If they accepted the prosecution's conclusion as to that, then it was their duty to consider whether the prisoner had brought about or introduced the chain of causation which led to the death. That, too, was a matter of

inference, a harder induction than the first one, and, in his view, the crux of the case. He suggested that they could find that finding as the most highly probable interpretation of a number of facts which were part of the circumstances surrounding the death, facts which in his view were unambiguous and which, coupled with the medical evidence and the conclusions from it, were susceptible only to one interpretation. The Judge had died through deprivation of insulin. Somebody had deprived him of insulin, dexterously done so by skilful interference with the bottles in the Judge's possession. If the interference was as highly skilful as he suggested, and even if less, clearly an expert had done it. They had heard where those bottles were kept, that they were accessible; that they were accessible to the prisoner, who was staying in the same hotel. The Judge had been in the habit of leaving a box full of them in an obvious place, the top drawer of his bedside table or on the table—why should he be suspicious?—and drawing, from that, daily supplies which he kept on his person. In fairness to the prisoner, he must say that anybody could have found access to them for a very short time (this was a subtle treatment of the evidence). However, suffice it for a moment to say that the prisoner had as much access as anybody other than the Judge himself. Add to that the fact that the prisoner undoubtedly possessed the technical skill (they may think the high degree of technical skill) necessary for the alleged interference with the bottles. They had, in addition, evidence that the prisoner was found later in possession of insulin which could only be reasonably accounted for (he stressed the word reasonably) by the explanation that he got it from recently opened bottles. The jury might find some other explanation. (This time the Attorney carefully refrained from suggesting that the prisoner might offer another explanation, because the prosecution is not allowed to suggest that the prisoner should give evidence or to comment on his failure to do so.) In the Attorney's submission there were two facts—the disappearance of insulin, and the finding of insulin—which were either connected through the active agency of

the accused, or else constituted a coincidence so improbable as to be miraculous. Add to this a third (which up to then the Attorney had skilfully not stressed—not wishing to tie the prosecution to a specific theory of interference), and that the prisoner was found in possession of a quantity of the very substance with which the insulin would be proved to have been corrupted. If that was a coincidence, it might be thought that miracle had been piled on miracle—Pelion on Ossa—to the misfortune of the prisoner.

However, he must not usurp the jury's function of deciding what inferences to draw. They were the sole judges of fact, the sole assessors of situations; and it was for them to decide whether on those facts they did infer (his Lordship would tell them whether or not they could infer) that the accused was responsible for the abstraction of insulin from the Judge's bottles. But in case they thought that some third person (he meant second person, but lawyers always say third person) had extracted the insulin, some importance—perhaps not very much, but they could not properly ignore it—must be attached to the prisoner's attitude in giving an explanation of the discovery of the insulin. It seemed clear that the man was conscious of the need for an explanation and of the difficulty of an explanation. Allowing for the nervousness of the most upright persons when being questioned, the Attorney suggested that the explanation left something to be explained. The explanation itself called for explanation—from whosoever considered the case, he added in a rapid afterthought, which spoiled his paragraph, but preserved his propriety.

So much for the technical side of the crime. There was to be added a fact—an established fact—that made a strong circumstantial case so much stronger as to be almost unanswerable. They would hear evidence that the bottles of insulin tampered with commenced to be used on the Wednesday. They would hear evidence that the Judge put them on Wednesday in his bed-table drawer.

On the Wednesday (there was no need for secrecy

now—he spoke with all the authority of Government) there had been an air-raid alarm, during which most persons in the hotel, including Judge Gosling, had quite properly—not uncourageously, but quite rightly, in accordance with Government precept—left their rooms and gone to the shelter down below. Some had not gone (the Attorney spoke as if this was cowardly of them), some had duties to perform, and that explained their not going. The prisoner was in the hotel and had no official duties at that time. He was not in the air-raid shelter.

Now, said the Attorney, quite fairly, it must be recognized that the prisoner could not possibly have anticipated these circumstances. The suggestion of the prosecution was that the prisoner, with materials ready to hand (pituiratin was not very bulky—a syringe was very small), had been waiting for whatever opportunity presented itself; and this was a Heaven-sent—nay, a Hell-sent—opportunity.

Suffice it to say they would hear evidence that on Wednesday night, between nine and ten, when the Judge was in the shelter and there was, for a moment, no policemen near the room: a fact ascertainable by anyone staying in the hotel—and of course the police had air-raid duties—the prisoner was seen in the passage that led to the Judge's room.

The next day he was seen near his home.

Those facts might be thought to speak for themselves.

The prosecution was prepared to say that on that night—and no other—the crime was committed. The Judge did not die till the next Sunday. But the crime—the act that resulted logically in the death of the victim—was committed on the Wednesday, in those hideous circumstances.

Further evidence of this was provided by calculation of the number of bottles used. Expert evidence would be given that sufficient appeared to have been used to cover Wednesday to Sunday—and to prove effective through the elimination of the insulin supply.

If it was suggested that the Judge would have noticed the shortage before, then there was the added feature

of ingenuity, which was observed by one of the expert witnesses, that the interference had been carefully calculated. Not more than one bottle had been used by Wednesday night. That could be reasonably inferred from the numbers. The bottles were in a series. If he was right, the interference was graduated. Some bottles had less insulin than others. The least insulin was in the middle. Apart from the terrible sinisterness of the device, calculated, perhaps, to delay the death till evidence had gone cold, there was the consequence that the Judge would not notice the substitution.

Someone had made sure that an effect must take place. He (whoever it was) guaranteed that less insulin would be taken progressively, whichever end was started from; and that eventually, in a few days' time, more would be absorbed.

How ingenious! How diabolic! There could be no objection to those words here. Given graduation, then, if there was any doubt that the intention in the substitution or interference was harmful—not jocular—surely this proven display of ingenuity disposed of it. (The jury did not know that this was circular argument. Nor, perhaps, did the Attorney. And its effect was more prejudicial than helpful to reasoning.)

All this, alleged the prosecution, was done by the prisoner. The jury, in order to convict, must bring the ingenuity right home to the prisoner, not merely suspect him of it.

In this process there was one fact or set of facts which must be considered, and which heightened the probability of the accused person's responsibility to a degree which might make it appear little short of absolute certainty. There was the attitude of the accused person to the person killed. Between them there was the relationship, the intimate relationship, that one entertained a grievance against the other. The accused had actively expressed hatred of, and indignation at, the deceased; he had already shown violence towards the deceased, and had exposed himself to penal consequences if the Judge desired to proceed against him. And there was evidence

that the Judge, to the accused's knowledge, had been considering what steps to take in order to vindicate what he probably thought, and rightly thought, was the outraged dignity of his office. From hatred, then, or from indignation, or from fear as to the future, the accused had drawn, in the prosecution's suggestion, a motive for doing fatal injury to the deceased. Clearly he had evinced, on at least one occasion near enough to the date of the death, an intention to do harm to the deceased. If he set out later to do this particular mischief, then, if he did not actually intend the death of the deceased, but only harm, he, the Attorney, took the responsibility of saying to the jury (and of assuming that His Lordship would also direct them) that his acts, with the consequences, amounted to murder. If one sets out to do grievous bodily harm to another and death ensues, that is murder. But if the jury were satisfied that the accused had done what he asked them to infer that he had done, then they could also infer that with his scientific knowledge he knew the probable consequences of his act, knew that death was probable as a direct consequence. Let them be satisfied first of the fact, and he was content to say that the intention, and the question of malice, would prove very much easier. And on that, added the Attorney, with the air of a Silk who delegates a quite important task to a promising junior, they would have the advantage of the direction of His Lordship.

Generally, he added, they would be guided by His Lordship on all points of law, and they would undoubtedly be assisted by His Lordship as to what facts they should value and what they might ignore. They were the sole judges of fact, and undoubtedly they would be conscious of the great responsibility that lay on them. One thing it was important to say: and although His Lordship would certainly say it to them, he also would say it, because it could not be repeated too often. If, on any single point, or on the whole issue, they entertained real doubt, they must hold that it was not proved against the prisoner; they must positively find for the prisoner on that issue. If it was material to the whole case, they must acquit

the prisoner. But the doubt must be a doubt—not a fantasy—it must be reasonable doubt, such as would guide an ordinary man in his own affairs; he would go so far as to say, such a doubt as would guide a very cautious man in considering an undertaking of difficulty. But they would not be doing their duty if they invoked, out of their imaginations, speculative fancies where there were reasonable probabilities. And, above all, though they would give their attention to his learned friend (this with a gracious smile), they would ignore everything which he himself had said, or would say, which was not well grounded in the evidence of the witnesses whom he now proposed to call before them; and to whom he asked them to listen with even more care than that with which they had favoured him.

13

ANALYSIS

THE Attorney's speech constituted a synthesis of the evidence, of which Romilly's speech would constitute criticism, and the Judge's summing up dispassionate assessment. Strictly speaking, the jury is only concerned with the evidence, and is supposed to make its own order out of something resembling chaos, as witness after witness follows each other in time, dealing with disconnected matters, not at all sequent, and most of which can only appear as relevant when the picture is seen as a whole—not while isolated persons are giving their evidence. And theoretically the jury is supposed to notice and remember all features of the evidence; which parts are consistent, which inconsistent; which challenged, which unchallenged; and to see a pattern among many other possible patterns in a shifting mass, not all of which is true evidence, so that they must perforce not only see the figure in the marble, but in the same act see which is marble and which is sand. In the result, cross-examina-

tion tends to become more important than evidence in chief, because its purpose or effect is usually more obvious. Similarly, speeches and summings up, the accidents of the judicial process, tend to be treated as essentials. Instead of helping the jury to assimilate the evidence, they enable the jury to arrive at a decision on the evidence without the effort of digesting it.

Typically of all juries, this particular jury had arrived at their view of the case at the end of the Attorney's speech. That they understood it, meant, at their level, that they accepted it. If Armiger was protected at all, he was protected by the function of stupidity which had enabled some members of the jury not to follow, and not clearly to understand what had been told to them. This stupidity, which statesmen, thriving on it, have described as the illogical constituent in the English character, has in other contexts been both useful and harmful to the nation. Those who do not see a point are, to that extent, protected against the conviction that follows a logically grounded rhetoric. If, then, the orator proves to have been wrong, the country has been saved. If the orator was right, then he was to blame for not making himself clear.

Thus at the end of the Attorney's speech a certain intellectual haze still hung over the jury-box as a protective spirit guarding the destiny of Armiger. But whatever had penetrated the smoke-screen of stupidity was to his detriment.

The most stupid-looking man in the box, the pig-faced man, had been sufficiently inspired by his distaste for the prisoner to follow and appreciate the Attorney's argument.

His frequent asides had brought round, to his point of view, his immediate neighbours on left and right and two persons behind him.

Of the twelve members (for, notwithstanding labour economies, twelve require to be convened for murder trials) there was only one whose reaction to the Attorney's speech could be called critical. A diminutive Scotsman at the end of the back row had already been noticed by Romilly

as manifesting a certain unhappiness. An elementary schoolmaster in appearance, but actually a railway clerk, he looked and indeed felt as if he would like to be able to get away and put it all into writing. He had, with one or two others, commenced to take copious notes, but realized sooner than the others, who were still conscientiously scratching, that these notes would never prove useful as an aid to understanding. The judge, he noticed, took no notes of the opening speech.

The pig-faced man had turned his face to the back row, and said, as audibly as he dared, "Clear case, I think."

"Oh, no," said the Scotsman, "oh dear no."

The first instinct of the housewife who sat beside him was to edge away. But realizing that she too was there to perform a duty, she took up the cudgels for the porcine one.

"Why not, indeed? Only a skilful chemist could have played about with those bottles the way he did."

The Scotsman was not quick-minded, or even clear-minded, enough to point out that this was circular argument. Not without reason, he was not sure that it was circular; but dimly he knew that it was dangerous.

"He isn't the only chemist in the world."

"There's no evidence of any other."

"There's no evidence at all yet," interrupted a so-far inarticulate man from in front of the Scotsman, and whose sympathies the latter had captured.

"I'm satisfied," replied the woman. "I accept the Attorney-General's evidence."

"Quite right, madam," said the pig-faced man dishonestly, and the conversation was terminated by the arrival of the first witness—the first of a procession intended to make the members of the jury learn something which most of them thought they already knew. The Attorney-General was not to know that with the jury his speech was "best evidence".

Among other consequences of our judicial process, the unavoidable way in which evidence is given, the careful limits that are set to the power of examining counsel, and the

inevitable accident that one witness may depose to several disconnected things, there follows the result that very important evidence may leave very little impression indeed on the minds of jurors—who are, by definition, laymen, unskilled in listening to evidence.

Thus, in this case, the evidence started with a number of individually trivial witnesses, whose evidence collectively amounted to a description of the hotel, and a time-table of events. They included the hotel staff and the management; also some police. The hotel servants all looked very unreal in their best clothes—and very anxious to get away from the box. The Attorney called this mass of evidence first, because it had been represented to him that these witnesses had to return to their duty. For the most part they were examined by Hewitson, and cross-examined, apparently perfunctorily, by Romilly, who elicited from them whatever trifles of information, about place and time, widened or narrowed the effect of their evidence to suit his purpose. In general there was no conflict. The pattern was appreciated by the Judge and counsel because this evidence had been laboriously taken in the police court (as, indeed, had all the prosecution's evidence), but to the jury it was disconnected facts, such as the fact that such a maid cleaned such a room at such a time; and in cross-examination wouldn't swear what time it was, or whether or not she had locked the door; or that such a policeman went on duty immediately in succession to such another one, who wasn't necessarily the last witness. When a sufficient quantity of these "time and place" witnesses had been called to reduce the proceedings to the maximum of boredom, the scientific witnesses, who had arrived late, and many of whom wished to return early, were called.

By way of legal flattery to science, these were examined in chief by the Attorney-General. Their evidence, when audible, was unimpressive, but its cumulative effect was a little clearer, and was clarified further by occasional comments from the Bench. Strings of qualifications were read out; and witnesses deposed to the nature of insulin, the possibility of interference with insulin and substitution

for it at various stages in its progress from source to recipient; the nature of the substance alleged to be substituted by the prisoner; the probable effect of such a substitution on the patient; culminating in the evidence of doctors as to experiments that had been made in the past on deprivation; and, finally, Harley Street opinion that, in all the circumstances, making all manner of limiting assumptions, Harley Street would conclude in a perfectly hypothetical case, resembling in every particular the fate of Judge Gosling, that the cause of death was deprivation of insulin.

By way of preliminary skirmish in front of his first line of defence, Romilly's first aim was to underline what they did not say. Harley Street, not without difficulty, admitted that Harley Street did not say that there was clear evidence whether the empty ampoules had been progressively deprived of insulin content, or, all at once, totally deprived. The speed of death was no indication, one way or another. Harley Street was inclined to think that less than the maximum had been extracted. But Romilly tactfully and successfully persuaded Harley Street not to commit itself.

The process did not bore the jury, but it left no impression on them. The Judge, however, took a note which meant that, when it came to summing up, he would make no assumptions as to the mode of abstraction; on the whole a point scored for the defence.

The second phase of Romilly's cross-examinations was calculated to mitigate the effect of certain positive evidence. This proved (as he expected) more difficult and less profitable; but it was necessary. He asked about the possible effect of omitting a dose (this helped in various ways to show alternative causes of the death). And if the answer was that it would not prove fatal, that answer, coupled with a further question as to the possibility of a man injecting himself with a substitute without feeling the effect, kept open the very academic possibility that the process alleged against Armiger was not murder. There was the further point to this end, that the Judge's death was not made inevitable by the substitution, if the sub-

stitution created an immediate noticeable effect. But the medical opinion was circumspectly satisfied that the victim need not have been conscious of the substitution.

By this time the atmosphere between counsel and expert witnesses had become congenial and almost confidential. This being achieved, the ground was prepared for an attempted advance.

"Tell me, doctor, about pituitrin. Is it a simple chemical substance or an organic one?"

"Organic. By which I mean a complex of complex compounds."

The scientist was evidently in a mood to be frank.

"Organic? Does that mean that it is not chemically synthesizable?"

"In this case."

"Consequently, not perfectly analysable?"

Harley Street had gone too far to withdraw.

"Not analysable—but recognizable."

"Not analysable," repeated Romilly as if absent-mindedly, but for the jury to hear. "Not analysable."

Then, turning again to the scientist:

"Insulin is an organic substance?"

"Yes."

"Analogous to any extract from a ductless gland?"

"Quite so."

"And, therefore, not analysable?"

"Recognizable, I should say, rather than strictly analysable; but one doesn't make mistakes about it."

"That, doctor, is for the jury to decide."

Romilly's attack was well conducted and proceeded quite far. He elicited that other products of ductless glands, such as adrenalin and thyroid extract, were not dissimilar in general nature to pituitrin, although recognizably different.

He could not prevail upon anyone to agree that there need have been no foreign substance in the ampoules except possibly water. And he did not press the point, for fear of spoiling what he had achieved.

This amounted to the recognition that no chemist could

prove analytically that pituitrin had been mixed with insulin, but that they all suspected it, because the theory was consistent with appearances and effects.

In this cross-examination Romilly's own knowledge of chemistry stood him in good stead, illustrating, incidentally, how extra-legal knowledge often strengthens the advocate—and has been responsible for great forensic successes.

The Attorney was careful and able in re-examination. With the aid of the Judge he established that there was no good reason for suspecting the presence of adrenalin or thyroid extract, that pituitrin was the likely agent, consistent with all the appearances, that pituitrin was known to chemists to be a neutralizer of insulin, and the only substance known definitely to counteract, rather than merely replace, insulin—and the only substance whose functions appeared directly contradictory to those of insulin.

The Attorney also made it clear through the witnesses that these extracts operated as functions rather than remained as substances, which gave to the suggested method of killing an even more sinister, and—what was worse—an even more technical, character than it had borne at first sight. If Romilly could show that the functionality of the process made the alleged method unprovable, well and good; but on the whole the Attorney felt, and showed by the pleasantness of his manner, that he thought that Romilly had clinched his case for him. Actually, Romilly was concealing what he thought was his last line of defence. Not knowing this, the Attorney thought that Romilly was rather spiteful when he objected to the release of some of the expert witnesses. But the court accepted his tacit assurance that he might need them at a later stage.

More spectacular, but not more important, was Romilly's cross-examination of Arthur Hallam, the first witness to refer to the prisoner's personal relationship with the deceased. It seemed that with him the prosecution proper began. Arthur Hallam, a shabbily dressed (and that usually denotes quite successful) solicitor,

showed in the witness-box the composure that might be expected from an experienced clerk of court, which, among other things, he was. Indeed, in the lifetime of Judge Gosling, Hallam had played Pooh-Bah to his Honour's Ko-Ko. In the intervals of conveyancing and County Court work he acted as clerk to the magistrates, and as what corresponds to clerk at the Conscientious Objector's Tribunal. He, too, was well endowed with emoluments and ill-nature, but he gave his evidence correctly and, on the whole, fairly.

He deposed to the Judge's condition in the days immediately preceding his death, the increased frequency of the intervals of lassitude (indicating shortage of insulin); and he described, quite coldly, the now epic incident in the life of a medical book. He went out of his way to emphasize the fact that it was a medical book, but no one took much notice of this point.

Romilly, rising after the Attorney had sat down, judging that the man, though hostile, was not in a dogmatic mood, and would be disinclined to commit himself, decided to attack quickly.

A preliminary question was calculated to put the witness into a fairer mood.

"Did you see the Judge on Wednesday night, immediately on his return from the shelter?"

"I did."

"How did he seem then?"

The question was based on Romilly's knowledge of the withdrawal of the summons, and on his shrewd inference that that was the result of a feeling of infirmity.

"He was not well."

"Many people saw him. Would it be fair to say that he was very ill?"

"Very ill; but not, I think, dying."

Hallam had seen the point, which was that the Judge might have been dying independently of the deprivation, which on Wednesday night had not yet taken place, according to the prosecution's theory.

The answer, however, went too far, as Hallam should have known.

"Of course, you are not in a position to speak as to that, are you?"

Hallam was compelled to admit that that was not his province.

"Now, as to this book-throwing incident. It took place, did it not, at the end of an inquiry into the conscience of the prisoner; yet in which the feelings of the prisoner had not been spared?"

"Well, they were being inquired into, weren't they?"

"Your answer implies that his feelings had not been spared."

"I suppose it does."

"It was an inconsiderate hearing, wasn't it?"

"That depends on your point of view."

"But the prisoner was shown no sympathy, was he?"

"Well, hardly."

"And, consequently, can hardly be said to have had a fair trial?"

"I wouldn't agree with your conclusion."

"You wouldn't agree that an unsympathetic trial is an unfair trial?"

"Not necessarily."

Hallam missed the chance of pointing out that that was not the question. Romilly followed it up.

"Can you imagine a trial in which there is a substantial issue, and some real doubt, in which the court does not require a certain insight into the various points of view?"

"One needs insight; certainly—understanding."

"Not sympathy?"

"Well, a degree of sympathy."

"Especially when, as you agree, feelings were being investigated?"

"Yes."

"In the light of that, would you say on oath that in your opinion the prisoner got a fair trial at the hands of Judge Gosling?"

To Romilly's joy, Mr. Hallam, true to form, attempted a diversion, which Romilly had hoped for, and which he quickly showed to be evasion.

"Judge Gosling was not the only member of the court."

"He asked all the questions, did he not?"

"Yes."

"Without asking the advice of the others?"

"True——"

"And he delivered the finding of the Tribunal?"

"Yes."

"In his own words, and along lines suggested by his own questions?"

"Yes."

"So there's nothing in your point, is there?"

"No. I was only correcting what I thought was an omission."

"Then let me put again the question you omitted to answer."

Romilly was pressing what might appear to be an irrelevance, but the Judge was not interfering.

"In the light of what you agreed about the need for sympathy in a court, would you say on oath" (Romilly put this in as tactful a tone as he could) "that the prisoner received a fair trial at the hands of Judge Gosling?"

The solicitor's instincts were too much for him.

"I wouldn't say unfair."

"But you don't say fair?"

The witness displayed irritation.

"My Lord, I am surely not called upon to act as an Appellate Tribunal from the findings of Judge Gosling."

"You are called upon," pronounced the Judge, "to answer relevant questions. Is this relevant, Mr. Romilly? You are not relying on any extenuation—by way of provocation—are you?"

Romilly was well prepared for the interruption.

"This is relevant, My Lord, in two ways. First, I am trying to isolate the 'book-throwing' incident. I say it was an isolated occurrence, standing outside the case, and bearing no relation to the prisoner's character." It was well to make this clear to the jury. "Second, I am leading up to something which I cannot make very clear at this moment, but which I do assure you is relevant."

"Proceed, Mr. Romilly. I think I see your point; and as you know, I am very reluctant to interfere with defend-

ing counsel in a case of this type. I take it you are not going to put in a transcript of the Tribunal proceedings—I don't know that I could admit that."

"I am obliged, My Lord."

Romilly was now in a position to carry through the attack.

"One point I am making, Mr. Hallam, is that Judge Gosling was a very bad Judge. Can I expect you to agree with that?" (The question was neatly turned.)

"No, you cannot."

"Might I put it that he gave universal dissatisfaction to litigants?"

"Not to the successful ones, surely," murmured the Judge, gently.

Mr. Hallam said, "I don't agree," but it was not clear with whom he was disagreeing.

"You were present at the police court on a day quite near in time to this 'book-throwing' incident?"

"I was."

"I think you said his health was normal on that day?"

"Yes."

"Do you remember a matrimonial case that he heard on that day?"

"Yes."

"That gave dissatisfaction, didn't it?"

"To the applicant."

"I put it to you that that wasn't a fair trial, either?"

"I don't agree."

But the question was more important than the answer, because Mr. Hallam's disagreements had now lost their force.

"And there was a bastardy case, was there not, in which people were concerned who lived in the Dragon Hotel?"

"There was a bastardy case."

"Was that fairly tried?"

"It was tried. I am not here to judge of the fairness or otherwise." (Hallam by this answer conceded much more than he intended.)

"And you were present recently, in the County Court, when a badly injured workman failed, with the aid of Judge Gosling, to establish his claim for compensation?"

"Judge Gosling found that he had not proved the causation of his injury."

"Judge Gosling tended to put all his judgments into the form of findings of fact, which did not leave the legal issue in doubt?"

"There was nothing improper in that."

"But it entailed as a consequence that appeal from Judge Gosling was very hard, because, as you know, the Court of Appeal does not interfere with the County Court Judges' findings of fact."

"That is true."

"Consequently, those who felt aggrieved by Judge Gosling were entitled to feel more than usually aggrieved by a failure in litigation."

No answer.

"You see, Mr. Hallam, the learned Attorney-General has suggested as a possible motive that the prisoner was aggrieved. I am now suggesting to you that anyone of many of what I should call Judge Gosling's victims, or what you would call unsuccessful litigants before Judge Gosling, might have felt at least as much aggravation as is attributed to the prisoner."

"I hear you suggest it."

"And they would have fewer chances by way of appeal."

No answer.

"And, if he was killed, may have killed him in default of appeal?"

No answer.

"And you have heard me say that in at least one case parties concerned lived at the Dragon Hotel?"

"I know nothing as to that."

The witness's silences and grudging acquiescences underlined Romilly's argument, but the Attorney-General deprived it of its invigorating character by a re-examination which Romilly expected, but could not avoid.

The Attorney asked one question.

"Do you know of any person who was aggrieved by Judge Gosling and who stayed in the same hotel, and who was a chemist, and in whose laboratory insulin and pituitrin were found?"

"Only the prisoner."

And Hallam left the box, feeling, rightly or wrongly, that he had rendered an important last service to the late Judge Gosling.

The attacking of witnesses is generally considered by counsel to be an undesirable form of defence, because it implies the existence of a story with which the defence cannot be reconciled. Preferable by far is the reconciliation of the diverse and the gentle mitigation of the uncontradictable. In trials of murder, however, attack lends vigour to the defence. It has the psychological value that it makes the jury think that there is a defence when possibly there isn't. Also it is more likely to succeed, when inconclusive, in murder trials, because Judge and Jury are ready to make every concession to a man whose life is in issue.

The duel between Romilly and Arthur Hallam was, however, inconclusive because it did not eliminate any one fact of importance from the chain of evidence against Armiger, but served only to weaken that inference along the lines of motive which was admittedly the least important part of the prosecution's case.

As he disrobed, after the rising of the court, Romilly was congratulated by one of his colleagues.

"You did awfully well with that witness. Are you getting away?"

"Just a little gallery piece, I'm afraid. We're still getting hanged."

After disrobing, Romilly went to see Armiger in his cell.

Armiger had sat through the Attorney's speech with many varieties of patience. Romilly had warned him strongly against interjecting. As the Attorney made point after point, Armiger had pulled time after time at Romilly's gown, desperately anxious to contradict, to alter, to point out an inconsistency, to urge a protest. Romilly, who knew how to be rude when occasion demanded, had eventually suppressed these constant disturbances to his concentration.

"Are you on trial, or am I?" had muttered Armiger.

Romilly had smiled, knowing who was on trial, and said, kindly:

"Please remember that you are going to suffer for my mistakes. If you leave me alone, there'll be fewer mistakes."

As the Attorney's speech went on, Armiger progressively realized that Romilly was right, that it wasn't a question of challenging individual misstatements, but that he was entangled in a web of events, of which individual threads were relatively unimportant. The whole web had to be cut through. He began to see the difficulty of this. Essentially a constructive mind, his was not trained at the same moment to appreciate and criticize. Once he began realizing the strength of the Attorney's case, he began to fail to discern the weaknesses. At the end of the speech he had long ceased to regard the Attorney as an individual opponent, but heard his voice only as the impersonal pronouncing of a doom that was overtaking him.

The evidence of the witnesses gave him respite. Here he could discern weaknesses. Nevertheless, as he sat in his cell, he was realizing that reality, which men of his type do not face, was relentlessly closing in on him. It was he, Claude Armiger, who was on trial and exposed to a danger which he was at last beginning to imagine. Unknown to himself, he was illustrating a truth in Shakespeare (or Shakespearean criticism), that not conscience doth make cowards, but consciousness makes cowards—which is what Shakespeare meant. Armiger did not know whether, in the ordinary way, he was brave or otherwise. So far, he had mainly been rash or impetuous, unheeding of results, contemplating only success. At this moment he was realizing the meaning of failure and sensing the incipience of that chill around the heart which is real fear.

Romilly's first words revealed that he understood his client's mentality.

"Don't let reality get you down, Armiger. It still isn't you that they mean."

Armiger rallied. The battle was on.

"You must tear them to pieces, Mr. Romilly. You did wonders with Hallam." Romilly did not disillusion him.

"If you can get the same kind of result from Williamson, we'll be alright. You're splendid."

"Don't over-estimate me. It's more than probable that everything depends on you. You may be feeling sorry for me yet. As for Williamson, well, if I had that wretch convicted of perjury it wouldn't help you much."

Armiger treated this as a leg-pull, and, for the rest of the time that Romilly was there, was comforted. Afterwards he was not so happy.

After Romilly had left, Helen Davenport was admitted to the cell. She found herself forcing a cheerfulness which she knew was not justified. Although she had missed the finer points of the case, she appreciated the atmosphere almost as well as anybody—and the atmosphere was not heartening.

There was little to talk about. Neither had any desire to discuss more than the case—and all that the case amounted to so far was that Romilly was doing well. For some time they sat together, and said very little. Even manifestations of affection seemed out of place. An unconcretized anxiety hung over them. It occurred to Helen that their intimacy, which had been nurtured in speech, might not be strong enough for silence. She felt more than a little guilty, but comforted herself by the reflection that this man was too self-dependent to need her. She prattled accordingly about books, and promised to bring him some. Eventually, she decided to go.

"Cheer up," she said, on parting. "You'll be out within two days."

"I should never have been in."

When she left the cell, each had succeeded in concealing from the other the real distress they felt. Reflecting later, Helen Davenport realized that it was distress in the nature of pity, rather than the deeper sympathy that she thought she had felt. Neither had confided in the other the fears and terrors that really mattered.

In the lounge of the Dragon Hewitson's clerk, a sharp-faced man like a cheap edition of Hewitson—whom he worshipped and copied—was "hanging about" waiting

for an opportunity to pick up some comment which he might disseminate in order to enhance his prestige among barristers' and solicitors' clerks, and with a view to doing whatever damage he could to rival counsel; for barristers' clerks enjoy the benefit of a doctrine of identification by which they are part, if not all, of their masters' personalities. What this one overheard was the Attorney's comment to Romilly.

"You're doing very well, Romilly. Uncommonly well, if I may say so. But I'm afraid you're still down."

When the clerk repeated this slavishly to Hewitson, the latter in a charitable moment observed: "Poor Mr. Romilly is skilfully engaged in making bricks without straw."

Next morning there was more straw for Romilly's brick-making. Williamson, the hotel "boots", suspected by Romilly, and known by the police, to have written the anonymous letter, testified that on the night of the Wednesday following the sitting of the Tribunal he remembered passing the Judge's suite when he saw somebody "hanging about"—might have been emerging. "Moving quiet like." The time was about half-past eleven, and the person that he saw was the prisoner.

Romilly did not attack him immediately, but was concerned first to extract from him a good deal of positive evidence for the defence; then, to set strict limits to what he said by emphasizing what he did not say; after which process of whittling, a positive challenge to the damaging part of his evidence might be feasible.

"When the Judge went downstairs, was the door unlocked?"

"Yes, my Lord."

"How do you know?"

"I saw it open, My Lord."

"In the ordinary way was it left locked or open when the Judge was out?"

Williamson could not see the drift of the questions and decided not to tell any lies.

"It was open when there was a bit of cleaning to be

done. But since the Monday we'd been locking it whenever possible."

"Who did the cleaning?"

"Margaret Rayson." (The name of a chambermaid who had given evidence.)

"What time did she finish on ordinary nights?"

"About nine o'clock, My Lord."

"And you used to lock the door then?"

"It was her business to lock up."

"Was it locked on this night?"

"Apparently not."

"Why apparently not?"

Romilly's thrust was parried by the Attorney, who interposed with the observation that a police witness had sworn that the door was unlocked.

Romilly did not allow himself to show annoyance, but he contrived to look at the witness and to address him as if he were under grave suspicion.

"If the door was unlocked, can you suggest why nobody locked it on this particular occasion?"

"Well, we were all busy and the All-Clear might have gone."

"You kept the door locked all day?"

"Yes, except in the morning."

"When the maids were about?"

"Yes, that's so, My Lord."

"Nobody could get in then, could they, with any prospect of being undisturbed?"

"No, I expect they couldn't, My Lord."

"And your instructions were to keep the door locked for the rest of the day?"

"Yes, My Lord."

Williamson had been advised (by Superintendent Fremantle) to address his remarks to the Bench, and his constant reference to the Bench, though correct, carried with it a suggestion of impertinence calculated to be disconcerting to the questioner. Romilly, therefore, timed his questions more slowly.

"And you kept those instructions punctiliously?"

"Yes, My Lord."

"Except on this night!" (This not as question, but by way of audible aside.)

The Judge was becoming restive at what appeared to be repetition—and Romilly moved to another point.

"What time did the All-Clear go on this particular night?"

"Half-past ten, My Lord."

The witness was still addressing the Bench, but he seemed to be becoming increasingly courteous to his questioner as the expected attack failed to develop.

"And the Judge immediately returned to his room?"

"Yes."

"Can you remember the previous night?"

"He was in all evening."

"And the night after?"

"He was in early."

"And the night after that?"

"Early."

"In each case when it was very light?"

"Yes."

"And when the maids were on duty?"

"Yes, My Lord."

"What time do the maids go off duty?"

"Ten o'clock, My Lord."

"Did the Judge leave instructions as to what time he was coming in each night?"

"Yes, sir, if he was staying out."

"You mean if he was coming in late?"

"Yes, My Lord."

With these disconnected questions Romilly was building up a position of which the witness could not possess the faintest conception, and the implications of which would be worked out through other witnesses. It remained now to weaken this one.

"You say you saw someone 'hanging about'?"

"The prisoner, My Lord."

The answer was confident and a little aggressive, but Romilly could use it.

"What do you mean by 'hanging about'? Do you suggest he entered the room?"

"No, My Lord."

Williamson had no time to decide whether to commit himself. Twemlow had advised him on this, but Twemlow seemed very far off now.

"And if he wasn't in, you couldn't see him come out?"

"I said 'hanging about'."

He was hedging. Actually he had mentioned "emerging". Romilly remembered this but was not hurrying.

"You saw someone hanging about, at a time when nobody could tell that the All-Clear might not immediately sound?"

The point was sufficiently clear to cause a dishonest witness to limit his reply.

"I can only say that I saw him at the door of the room before ten, My Lord."

In his anxiety not to be caught, and yet to give his enemy no chance, Williamson was playing into Romilly's hands.

"Not coming out?"

"At the door of the room, My Lord."

"Not emerging," commented Romilly, and proceeded:

"It can't have been much before ten?"

"Well before ten, My Lord."

Romilly was satisfied with this, but saw a chance of turning it to the witness's discomfiture.

"You seem very certain."

"I am certain, My Lord."

"Certain it was shortly before ten?"

"Yes, My Lord."

"Do you say that because you know that the All-Clear sounded at ten-thirty?"

The change of tone, carrying with it the significance of the question even to the witness's slow mind, was effective to disturb him.

"Certainly not, My Lord. I'm only telling the truth."

"Well, don't over-emphasize it. Do you know now that the All-Clear sounded at half-past ten?"

"I wasn't timing it, My Lord."

That impertinence cost him dear.

Romilly's next remark was very quiet.

"You told us quite definitely in your evidence that it

sounded at ten-thirty." (Romilly's apparently casual question much earlier had been well calculated.)

The Judge was turning back the pages of his note-book :

"Yes, he said that. And he also used the word 'emerging'."

"Why are you trying to deceive the court, Williamson?"

"I'm not, sir. I swear I'm not."

The "sir" was an admission of distress at this sudden thunder developing from a blue sky. Romilly kept up the tempo.

"Did you know something of the prisoner's intentions for ten that evening?"

"I don't understand what you mean, sir."

"You understand me well enough, Williamson. Do you or do you not know something about the prisoner's movements at ten? I'll help you. He had an appointment."

"Yes, sir."

"And you knew about it?"

"Yes, sir."

"You didn't tell us that."

"I wasn't asked, sir."

"Do you bear the prisoner some ill-will?"

"I don't at all, My Lord."

"You had words with the prisoner on another occasion, did you not?"

The questions were faster now, too fast to allow an ignorant man to chance a lie.

"I did, sir. But that's nothing to do with this."

"I suggest that you are not at all sure that the person you saw (if indeed you saw anybody) was the prisoner."

"Indeed it was, sir."

The emphasis of the answer, coming after this altercation, destroyed any force it may have had.

"Tell me, Williamson, when and why did you write an anonymous letter. Before or after you quarrelled with the prisoner?"

The number of allegations in that question was too much for the witness, and too much for the Judge.

"What letter, Mr. Romilly?"

This from the Judge.

"The witness knows what I'm referring to, My Lord."

"I didn't write any anonymous letter."

Romilly noted, but did not need to comment on, the acceptance of the suggestion of a quarrel.

Romilly turned to the Attorney-General.

"Have the police got it?"

The Attorney-General had it, and (seeing the irrelevance of it) was ready to make it an exhibit. A somewhat dilapidated piece of paper was produced. Romily showed it to Williamson.

"Did you write that?"

"No, sir."

"In it it says something about 'an hour'."

"Yes, sir."

"You know, do you?"

"I haven't seen it before."

"Give me a specimen of your handwriting, will you?"

A sheet of paper was handed up. And after the witness had written his name and address and various unimportant words, Romilly, observing quietly that he might have to have this witness recalled at a later stage, sat down. The documents were handed round the jury and back to counsel.

An elderly journalist withdrew hastily from court in order to write for the middle page an account of the devastating cross-examination with which Sir Charles Russell had destroyed the evidence of Piggott before the Parnell Commission.

As relevant cross-examination, as the journalist did not know, the display was less useful than spectacular.

But the Attorney-General, who had intended to re-examine Williamson with a view to developing Armiger's violence towards him, abandoned the project, and judging Williamson to have exhausted his utility, waved the whole incident aside by loftily calling for the next witness.

Hewitson busied himself in carefully studying the new exhibits.

The jury were satisfied that Williamson was a liar, but the Judge, the pig-faced man on the front row, and the

Scotsman had all noticed, with different feelings, that his identification of the prisoner as the hanger-about had not been seriously attacked. Armiger, who before the trial would have revelled in the discomfiture of the "boots", also realized its irrelevance, and felt and looked depressed.

Romilly was able to consolidate some further advantage by the fortunate circumstance that the next witness was Helen Davenport, who combined uniquely the rôles of witness for the prosecution and financial backer of the defence.

Her evidence was at least as useful as her practical aid. She saw the prisoner before ten. The Attorney-General, examining in chief, could not attack this.

The Judge, looking at the depositions, could.

"Before ten, Miss Davenport?"

"About ten, I said, My Lord, in the police court—but it was a bit before ten."

The Judge seemed satisfied.

Romilly's quite irregular coaching had got her over a difficult patch.

"Curious witness, this," grunted Hewitson in the ear of the Attorney, and the latter, taking a hint, sat down.

Romilly, in an ideal position, faced with a friendly witness, and able to ask leading questions by virtue of his rôle as cross-examiner, made capital of it.

"You had an appointment with the prisoner at ten, did you not?"

"Yes, sir."

She turned to him smiling, and looking at once pretty and encouraging. At that moment Romilly had great difficulty in taking his mind off the speculation how this girl came to be a receptionist, and how she had been so impulsive as to marry Healey.

"Yes," she repeated, noticing his abstraction.

Romilly came to earth.

"And he was early for this appointment?"

"Yes, sir. The air-raid must have made him early."

"Do you happen to know whether anybody else knew of your appointment?"

"Yes, sir."

"Who?"

"Mr. Williamson heard us making it."

The jury looked interested, but the pig-faced man was not impressed.

"Bit of a bitch," he muttered.

Up to this point the defence had been mildly spectacular, but substantially ineffective.

Williamson's evidence was discounted. But, undisplaced, the evidence of the discovery of the insulin bottles, which would never have been found save for the activities of the discredited Williamson, was still paramount; and now Romilly found himself unable to rely on the weaknesses of the prosecution.

He needed the big surprise, which he had concealed so carefully, in order to overthrow the effect of evidence that he could not gainsay.

Romilly's particular surprise was, indeed, of a delayed-action type, and was calculated not to explode until the solidest and most prosaic of the prosecution witnesses, the Superintendent himself, was in the box.

In chief the Superintendent deposed mainly to the place where the insulin was found and where the pituitrin; to the fact that when asked for information, the prisoner had been rude; that later he had made a voluntary statement; and that when charged he had pleaded "Not guilty".

Romilly's attitude to the Superintendent was unhostile, and his manner that of one who wishes to clear up a few trifling inessentials.

"When were your suspicions first directed to the possible cause of Judge Gosling's death—I mean after the funeral, of course?"

"I should say three or four days after that, My Lord."

"There had been suspicions earlier?"

"Yes, My Lord."

The Superintendent, speaking towards Romilly, directed his answers to the Bench with the offensive correctness he had taught to Williamson.

"You received an anonymous letter?"

"I did, My Lord, but there was suspicion before that."

"Was the letter not written by Williamson, in your opinion?"

"I thought so"—this cautiously—but the Judge was in action.

"He can't possibly know this. I'm surprised at you, Mr. Romilly."

"My Lord, he had charge of the inquiries and saw the handwriting."

"Leave it, Mr. Romilly."

Romilly was content to leave it. He turned to the letter.

"The letter says 'hanging about for an hour'. That isn't suggested now, is it?"

"No, My Lord."

"But that suggestion caused you to prosecute?"

"We prosecuted because of the evidence, My Lord."

The answer was good.

Romilly moved to another line.

"Even before Judge Gosling's death, there had been a police guard in the hotel?"

"There was a reason for that, My Lord."

For the first time Romilly showed temper.

"I'm not asking you for reasons. Kindly confine yourself to answers to the questions that are put to you."

The Superintendent made no comment.

"Before the Judge's death, was his room being watched, quite properly, by the police under your control?"

"Yes, My Lord."

"And immediately after the death, you were naturally investigating the room?"

"Naturally, My Lord."

"And between the burial of the Judge and the arousal of your suspicions, I take it that some supervision or enquiries were going on?"

"Quite so, My Lord."

"In other words, am I right in saying that since some time before the Judge's death until now, nothing could have been transacted in that room without your knowing it?"

"That is correct, My Lord, except for the Wednesday night."

"Tell me about the Judge's room. In that room is there a wardrobe?"

"Yes, My Lord."

"Have you had occasion to examine the lower left-hand drawer of that wardrobe?"

"We examined everything at the time, My Lord."

"To the best of your knowledge, is that drawer with its contents in the same state now as it was at the time of Judge Gosling's death?"

"I don't see how it can be otherwise, My Lord."

The Superintendent did not understand this line of questioning. But he was not being attacked for his rather irregular investigation, and he was not being attacked for questioning a witness after he had formed a suspicion. These dangers had made him anxious. Now, slightly relaxed, he was answering without *arrière pensée*.

The furniture questions puzzled him, but he did not mind humouring counsel. But the next question, which took the form of a request, staggered him.

Romilly had glanced towards the clock, which hastened slowly to register lunch-time.

"Will you bring that drawer here so that we can look at it immediately after the adjournment?"

"Bring the drawer, sir?"

"Yes, bring the drawer."

The Judge appeared to think that, if the court was being refurnished, he ought to have some say in the matter.

"I don't follow this line of questioning, Mr. Romilly, but since you are pursuing it, I take it that it is necessary." (To the Superintendent.) "Can you bring it?"

"I can have it brought, My Lord."

"Do you wish to defer your further questions until it is brought, Mr. Romilly?"

"I think that would be the best course, My Lord."

"Then," pronounced the Judge, "we shall adjourn now and we investigate the bottom drawer at two o'clock."

But Romilly (as Hewitson put it later) was not going to let the Superintendent escape without a kick in the most important direction.

"My Lord, it will help me if your lordship will direct that the drawer be brought precisely as it is now."

As the Superintendent turned purple, the Judge said quietly: "I think we can trust the Superintendent for that, Mr. Romilly."

The lunch interval passed amidst such excitement that nobody had any lunch except, of course, Romilly, who ate enough for three men, steadfastly refusing between mouthfuls even to confide to colleagues the meaning of this obscure move among the furnishings.

Two o'clock found the Superintendent in the witness-box, the bottom drawer displayed on the table in the well of the court, and the Judge pretending hard not to look at it.

Romilly resumed the questioning.

"You are in charge of this case, Superintendent?"

"I am, My Lord."

"Do you know whether your expert witnesses are in court?"

"They are, My Lord."

"Now, did you bring that drawer?"

The Superintendent pointed to it.

"It is on the table in the well of the court, My Lord."

"Can you see what is in it? In particular, are there some cellarettes?"

"I can see, My Lord, a number of cellarettes each appearing to contain a number of little bottles like the insulin containers."

"Take some of them closer to you, Superintendent."

In compliance with this request, half-a-dozen cellarettes were placed in position in reach of the witness-box.

"Now, Superintendent, take one of those bottles in your hand and compare it with exhibits one to twenty (My Lord has those)."

After a certain amount of activity on and below the Bench, the Superintendent was able to effect the comparison.

"They look precisely the same."

"Would it be fair to assume that these are part of the late Judge Gosling's supply of insulin?"

"I think that that must be the case, My Lord."

"Very well, then, will you extract from these new bottles any ten you like? When you've extracted them, they'd better be marked as exhibits. Will my friend put them in?"

The Attorney was glad to do so, though the difference did not matter, since Romilly did not have a "last word" to protect.

While the labelling was being done, Romilly addressed himself to the Bench.

"My Lord, will Your Lordship direct that these new exhibits be immediately examined as to their contents by the analysts called for the prosecution, in the presence, if possible, of my own analysts?"

"I take it that you would like it done in the precincts of the court, Mr. Romilly?"

"If possible, My Lord. Indeed, I should be satisfied if your lordship would give them into the custody of Dr. Lowther and invite his personal inspection of the contents."

The Attorney-General was on his feet offering Dr. Lowther to the defence as a priest might offer a sacrifice.

Dr. Lowther was doing better than that. He was actually in the well of the court taking the cover off the first of the new exhibits to be labelled. A quick smell and a quick taste appeared to animate him with some boldness.

"May I say something, My Lord?"

"Certainly, Dr. Lowther. You have been sworn once. Do you need your apparatus?"

"There is no need for any apparatus, My Lord. The contents of this bottle, My Lord, appear to be pure water with a very slight oleaginous tincture."

The Judge wrote this down.

Romilly addressed himself to Dr. Lowther: "While you are down there, Dr. Lowther, will you apply those tests that you have just applied to the other nine bottles?"

Expediently, Dr. Lowther did so. After a few minutes he seemed ready to speak.

"What result, Dr. Lowther?"

"All water, My Lord."

"Will you have a glance, Dr. Lowther, at any bottle in those cellarettes that you care to examine?"

The doctor obligingly did so.

"Do they also appear to contain water?"

"Nothing but water," replied Lowther.

Romilly seemed to relax in a self-satisfied way.

"My Lord, I think I need not trouble further either this witness to whom I am greatly obliged, or the Superintendent, unless, of course, my friend wants him."

The Attorney-General had no desire to do anything but get rid of the ill-assorted pair.

"That, My Lord, with the statement of the prisoner, is the case for the prosecution."

The Clerk of Assize rose to his full height. "When charged, the prisoner replied, 'I am not guilty'."

Romilly was noticed to be drinking a glass of water preparatory to his opening of the defence.

14

DEFENCE AND COUNTER-ATTACK

TO the surprise of the jury, the first thing that happened, after the close of the prosecution's case, was that they were herded together and ushered out of court into a small jury room. They did not know that Romilly had intimated to the Clerk of the Court that he wished to make a submission that there was no case to answer.

Normally, at the close of the prosecution's case, the effect of the evidence against the prisoner has accumulated to its highest; after that it may or may not diminish. In this case a heavy blow had been struck at the prosecution before it closed. The compensating factor for the

prosecution, however, consisted in any method they might find of reversing the trend during the cross-examination of the prisoner, if he gave evidence. Strictly speaking, there is no obligation on a prisoner to give evidence. Indeed, before 1898 he was not allowed to, not because Englishmen are deemed to be innocent until they are proved guilty, but because, in old English jurisprudence, the evidence of a prisoner was considered to be unacceptable because it was likely to be perjurious. The result, in many cases, was hardship. Since 1898 the hardship has been altered—not abolished. Nowadays, if there is a case to answer, the prisoner is morally bound to give evidence, because, if he does not, the jury wonders why not, and the Judge is entitled to comment on the extraordinary absence from the witness-box of the one person who could really help the defence with his evidence. Armiger's position was, therefore, that if Romilly did not succeed in his submission (and such successes are rare), then, there being, in the Judge's view, a case to answer, Armiger was under a moral compulsion to give evidence; and Romilly knew that this entailed a continuation of the fight under adverse conditions.

In the jury-room there was a general ignorance of the legal position, but, for once, Armiger's stock stood high. The Scotsman had become articulate, even dynamic; the pig-faced man was bowing before the storm.

Said the Scotsman: "It doesn't matter what you think about his character, there is no case against him. . . . No, madam, never mind what the Attorney-General said. It is now proved by demonstration that he could not have done it. At most he had time to interfere with five or six little bottles. But now we know that he had to have time to interfere with a gross of little bottles."

The pig-faced man said nothing. The word "gross" was too convincingly commercial to permit of an answer.

Said the man who had sat behind the pig-faced one: "That's not quite proved, old chap."

"Are you suggesting, sir," replied the Scot, "that two people are involved—that one of them emptied five or six bottles while the other emptied all the rest? Is that what you're saying?"

The other withdrew cautiously.

"No, I don't go quite as far as that."

Said the woman who had sat by the Scotsman: "He's getting away with murder."

In court, the Judge was saying to Romilly: "I agree, Mr. Romilly, that your cross-examination of the last witness has elicited a very strong criticism of the prosecution's evidence—as to its effect. But you cannot say that you have established the impossibility of the prisoner's guilt. And I agree with you that on the submission you don't have to. But I am not inclined to hold that you have shown more than a difficulty of induction. I do not take the view that you have deprived of substantial effect a good deal of positive evidence against you. I should like you to leave it at that. I do not want, at this stage, to prejudice you by discussing in detail the merits of the very interesting criticism you have developed of the case for the Crown."

Romilly realized the nature of the hint that the Judge was giving him, and wisely refrained from carrying his argument further. He only hoped that the Attorney-General would not see as far as the Judge. As for the Judge, he was later to explain to Roper that it was quite possible for two hands to have been at work and the prisoner still to be guilty—a line of thought which revealed to Roper the extent of Armiger's ill-luck in having a strong-minded Judge.

If Romilly made the mistake of under-estimating the mental calibre of his opponents (a particularly easy error to commit in a context of legal politics), it was not for want of the knowledge that years of experience, as enjoyed by the Attorney, tend to sharpen even the dullest wits. Rather he was forced to assume a slowness of reaction in order to make himself believe that his position was tenable. Perhaps he had reckoned without Hewitson, whose aplomb and general superficiality concealed quite an agile mind, sharpened, possibly, by animosities that Romilly was too self-centred to have considered.

While the jury were returning, Hewitson was busily employed in making cartridges—that is, in writing on those small pieces of paper, which appear to be the arsenal of junior counsel, short and sharp bullet-like instructions to the big gun who was his leader.

Ignoring these missives with the impunity that comes from long practice, the Attorney remarked kindly to his junior: "Do you feel as if you've been knocked on the head with one of those 'blunt instruments' that they used to use in my day?"

"No, I feel as sharp as the little knife with which we're about to stab somebody in the back."

"Meaning by that cryptic utterance, what?"

"Meaning this," and leaning over the desk that divided the two men, Hewitson proceeded to whisper a few clear sentences which made the Attorney open his eyes with interest, some respect and not a little horror at the complexities that he instantly divined.

"I feel that it's a line of questioning that Romilly will object to."

"Yes, and I think I can see how. I've made some notes for you. But it's more important to play out time. Keep him in the box. I'd like to develop some arguments over-night."

The fortunes of war had enabled Romilly to achieve effective timing. The jury were all at sea, but drifting away from hostility. They, however, could be influenced the other way if he gave the other side a chance. Knowing, then, that the solitary weakness in his strategic position could only be attacked successfully during the cross-examination of the prisoner, he contrived to have the prisoner in the witness-box at the earliest possible moment after the adjournment, the only intervening evidence having been the short and surprising investigation of the containers. In this way he could expect to deprive the Attorney of a reasonable interval in which to achieve a reorientation and a new grasp of the position: and if matters so arranged themselves that the Attorney's cross-examination finished the same day, there was a good

chance that the counter-attack would never materialize and the flanking movement, with ammunition provided by the genie of the little bottles, prove completely successful.

A question to the Judge elicited that the latter was prepared to sit late. The time factor was still difficult; and Romilly made his opening speech exceedingly short.

The jury, he pointed out, had been convened to consider a case grounded in an anonymous letter. The anonymous letter had alleged that the prisoner hung about outside a certain room for an hour. The evidence now was that he could not have been "hanging about" for half of that time--nay, for a quarter of that time. There was no evidence that he was there in any sinister way. In fact the prosecution itself had given a complete explanation of the "hanging about"--it was to keep an appointment which the prosecution's witness knew about. Further, there was no evidence at all that the prisoner had entered the room in question. The witness, Williamson, about whom they might have their own view, had finally admitted that he saw no emergence and he saw no entry. And let them consider farther. Was it not now common ground that the short time in question--the short time of the "hanging about"--was the only time in which the prisoner could have done what was alleged? They had heard, and they would hear, all that he had to do in that time, in order to substitute pituitrin for insulin in twenty bottles. If, indeed, it was pituitrin. There was real doubt about that - doubt sufficient to wreck the case. Pituitrin was the substance found in the prisoner's room. But who could dogmatize and say it was in the bottles? He explained to them what was meant by the "unchemical nature" of insulin and pituitrin. Could they convict a man on a conjecture? And the conjecture had to be supported by the allegation that the prisoner had time and opportunity to effect the substitution. To substitute carefully an organic substance for an organic substance, graduating the substitutions the while! Truly a formidable task.

And now it was proved that not twenty, but many dozens of bottles had been tampered with most efficiently. (With water, notice, not pituitrin.) Had he done all that while "hanging round" the Judge's room, with an Alert in process: not knowing what was going to happen—or when the Alert would end?

If someone else had participated, where was he? Had two people interfered? What a coincidence! Obviously the murderer—if there was a murderer—was someone who spent much time in, and had plenty of access to, the Judge's room. In the light of the traces that someone else had left, how could anyone accuse the prisoner of murder?

That was, strictly speaking, an end of the case. The prosecution had set out to prove something, and had found it disproved. It was not necessary, at any time, for a prisoner to prove his innocence. Here the prosecution had proved it. But it was only fair to his client, a man of character and integrity, to give him an opportunity to go into the witness-box and say on oath that he was innocent, and to explain why he had allowed a suspicion—however vague—to attach to him. This he now proposed to do.

As Romilly finished (having, with permissible disingenuousness, made a virtue of necessity), and as Armiger set out for the witness-box, the Attorney began to think of his future tactics. He was thinking:

"This Junior of mine seems sure that Romilly will object to my line, and desperately keen to over-ride his objection."

A further thought stimulated him into turning round again and leaning towards his junior's ear.

"You know, Hewitson, it isn't part of our duty to embarrass a member of the Bar. Why the hostility?"

"My dear Dovecot, I'm only anxious that someone should not get away with murder because of a technicality. I'm afraid I've got a conscience, too."

He said this pleasantly, in an endeavour to conceal a real determination. Had Roper been listening, he might

have wondered at what moment (since that Monday night following the death) this conscience and this loyalty had developed.

The Attorney noticed the determination, and, after a rapid consultation with his conscience, in its capacity as moral leader of the Bar, decided to let himself be guided by his junior.

Armiger, in the box, looked more impressive than Romilly and Helen had expected. His conventionally unconventional dress emphasized the appearance of intelligence. But still Romilly regarded him as more dangerous to his own case than a more ignorant man might have been. Seeing him in this position he realized, for the first time, that he still did not know Armiger's mind. His own garrulity had prevented the other from expressing himself to him except in actions and assents.

For that, and other reasons, he endeavoured to make as short as possible the examination in chief. A rapid survey produced details, such as name, address, occupation, and an admission of the possession of a highly particularized conscience, which admission would have developed into proud declamation if Romilly had not cut it short.

"As a conscientious objector, what attitude have you towards the killing of anybody?"

"I value human life so highly above all other values that it is morally impossible for me to kill anybody. Whatever the provocation," he added, as an afterthought, and to his detriment.

"We have heard that you said to Judge Gosling, 'I'll do you in, you sanctimonious old diabetic'. Did you intend to kill him?"

"No, sir."

"Address his Lordship and the jury," indicated Romilly.

"No, My Lord," declared Armiger, turning towards the Judge, who was looking at him with the kindly interest that an entomologist manifests to one of the rarer specimens. "As a matter of fact I said 'I'll do for you'," he added. Then (as if realizing the unimportance of

that): "I was guilty of a deplorably hysterical outburst of which I am very ashamed. I had no intention of injuring Judge Gosling."

"Did you not throw a heavy volume at him?" asked Mr. Justice Harwood, making the matter sound worse because the question came from the Court, not from accused's own counsel.

"In my excitement, I did, My Lord. And I regret it. But the act was quite unintentional. I assure you, My Lord, that I could not set out with the express intention of injuring anyone."

"Your conscience wouldn't let you," remarked the Judge quietly.

He was looking at the man carefully, trying to gauge his degree of fanaticism.

Armiger thought for a moment that he saw the ghost of Judge Gosling on the Bench. But Mr. Justice Harwood had no intention of being cynical when he threw out that observation.

"At all events, your hurling of the book does not imply an intention to kill. What you are saying now is that you did not intend even to injure. Is that right?"

"Yes, My Lord."

While this dialogue was proceeding the pig-faced man, commencing a process of slow self-rehabilitation, was explaining in an undertone to the two men beside him. "Intention, that's the point."

"You see, the idea is that if he messed about with the insulin with the intention of injuring the Judge, and the Judge died, it would still be murder."

Romilly decided to take the worst difficulty early, before the position deteriorated.

"Do you know anything about insulin?"

"A good deal."

"Are you experimenting in it?"

"Yes."

"How?"

"I test the effect on it of endocrines—and indirectly find data for the modern theory of an alternative causation of diabetes."

"Is that part of your work?"

"No, it's a private research on which I hope to publish."

"Do you have insulin in your rooms?"

"Yes, that's where I work. I have a laboratory there."

"Do you leave it lying about, or do you conceal it?"

"I leave it lying about. That's how the police were able to steal it so easily."

This aroused laughter, but Romilly did not wish to pursue any criticism of the police that might imply that his client had something to hide. The police are usually wrong, but only rogues with no defence venture to base any hopes on attacking them. Rarely does concrete evidence suffer in its effect through the impropriety of its obtaining.

"At all events, it was open to all. Was there any danger of evaporation without the aid of the police?"

"None at all."

"What do you say about the container it was in?"

"Perfectly safe, and sufficiently air-tight for all practical purposes."

That was as far as it was advisable to go in that difficult enquiry. Romilly switched his questioning to the night of the alleged crime.

"Did you on the Wednesday night we have heard about go into Judge Gosling's room while the air-raid was on?"

"I did not."

"Did you go in at any other time?"

"I did not."

The answers were unemotional, but adequate.

"Did you at any time extract insulin from any of the bottles owned by Judge Gosling?"

"No, sir."

"Or insert pituitrin into them?"

"Certainly not."

"Or otherwise interfere with them?"

"Never, sir. I never entertained such an idea."

The Judge anticipated Romilly's next point, and saved him from making his witness seem too clever.

"This process that you've heard described, Armiger,

speaking as a chemist, how long should it take to empty an ampoule of insulin with a syringe and insert pituitrin?"

"I should find the operation difficult, My Lord. I've never done filling. But a very skilled man (in that direction I mean) would take at least five minutes per ampoule."

The Judge nodded sagely. Romilly followed the point up.

"How long would you give yourself to deal with twenty?"

"At least two and a half hours, and I'd need a certain amount of equipment."

"And to do fifty or sixty?"

"A half day."

The point was now clear to the jury.

"On that Wednesday night you had an appointment, we've heard?"

"Yes, with Miss Davenport for ten o'clock."

"What were you doing at nine-thirty, when the siren sounded?"

"Writing in my room."

"Did you stop writing or continue?"

"I continued for about twenty minutes. There was no gunfire. Then I went straight upstairs to meet Miss Davenport."

"Did you pass Judge Gosling's room?"

"Yes."

"Did you see Williamson?"

This from the Judge.

"I wasn't looking for him, My Lord, but I shouldn't be surprised if he was about." ("No" would have been a better answer.)

"And you proceeded to meet Miss Davenport?"

"Which I did."

"At what time?"

"Several minutes before ten."

"Was she there?"

"I had to wait for her. I was unpunctual."

"Unpunctual?" queried the court.

"I was too early, My Lord."

"Would that we were all unpunctual that way," mur-

mured his lordship, and Romilly sat down, having left the witness in good time and on a reasonably good note.

Fast as Romilly had been, the examination had taken a good part of the afternoon, and the Attorney found it easy to play out time with questions as to the prisoner's movements, the prisoner's skill in the handling of insulin and the carelessness implied in the enforced use of a non-air-tight container.

After some courteous and fairly detailed questions about his occupation and his mode and place of living—

"Armiger, your work is of a highly advanced character, is it not?"

"Yes."

"You are very skilful?"

"I suppose I am."

"Skilful enough, I suggest, to deal with twenty ampoules in less than half-an-hour."

"No, sir, definitely not."

"What happened to the container of the insulin in your room?"

"I broke it."

"I thought that scientific men were pretty careful with their bottles and instruments?"

"I am, usually."

"You don't break many bottles?"

"No, sir."

"It is an unfortunate coincidence that you broke this one, isn't it?"

This was comment, rather than a question—but in this type of comment the Heavy Silk is privileged to indulge.

"I am afraid it is."

"The container you left the insulin in was not perfectly air-tight, was it?"

"Not perfectly, but good enough."

The Attorney knew when to leave a good thing alone.

"About your work, Armiger. You don't do insulin research in the course of your employment?"

"No, sir."

"Your recent interest in it has been unfortunate for you?"

To this unfair question Armiger was weak enough to reply: "Another coincidence, I'm afraid."

The irony was lost on the jury, only the bad effect remained.

The Attorney ignored the irony and advanced steadily along a now more promising line.

"Your interest in pituitrin is also unfortunate, is it not?"

"If you start out by assuming that I'm guilty, yes."

"Who put you on to this line of research?"

"I keep in touch. I have some German literature on the subject—I should say, I had some literature."

The Attorney pounced on the opening.

"A book on the subject? What book?"

"A book on ductless glands."

The Attorney sought no details, in case Armiger knew them.

"Where is it?"

"I'm afraid I haven't got it now."

"Lost it?"

"Yes, I think so——"

The answer, which was completely true, was so deplorably weak that the Attorney left it.

"Where do you get your pituitrin?"

"I buy it."

"Regularly, or just this once?"

"Regularly."

The Attorney endeavoured not to sniff audibly.

"Where did you get your insulin?"

"I buy it."

Followed a barrage of questions as to place and price of purchase, all of which Armiger answered without difficulty, but without conviction. He had no receipts on him.

Romilly, looking at the clock, saw that it was well past six.

The Attorney, also looking at the clock, finished for the afternoon with a question which forced the adjournment: "Have you anywhere got records of these purchases, any receipts for money?"

"I don't think I've kept them."

"Are you prepared to allow a search for them, to see if you have?"

"By all means—I hope the police are as good at searching as they are at house-breaking."

The Attorney, ignoring the jest, which no longer impressed anybody in court:

"Perhaps this is a convenient moment, My Lord. They can be looked for overnight."

Armiger, who could not possibly see the strategic problems involved in this adjournment, had innocently played into Hewitson's hands in his pathetic endeavour to seem honest. The place of purchase of pituitrin was quite unimportant.

"How's it going, Mr. Romilly?" he asked, through the bars of the dock before going below with the warders.

"Very well indeed, old chap. Keep smiling."

Advice which he was to have difficulty in following himself.

To Helen Davenport, who visited him for a few moments in his cell, Armiger confided: "I feel pretty good—but I feel sorry for poor old Romilly. He's getting the brunt of it. He's very fed up that I'm still in the box."

"Listen, Claude," interrupted his visitor, with a firmness in her tone that he had not heard before, and that he did not entirely like, "there's something you've got to be very careful about. . . . Mr. Romilly wants to talk to me about it. I'll come back later."

Avoiding his colleagues, Romilly, after a few words with Brennan, who throughout the case had been sitting beside him, being very useful, returned to the hotel and spent a long time explaining to Helen Davenport a difficulty and a policy that he could not talk about to Armiger. Later in the evening she left him and, armed with a note, went back to Armiger's cell. She wished that the man she was going to see was as easy to deal with as the man she had just left.

Left to himself to brood, Armiger did not retain for very long the good spirits which the intellectual activity of the witness-box had stimulated in him, coming as it did, after

weeks of idleness. By the time Helen Davenport returned he was in a grim mood, and her business-like approach and the matter-of-fact way in which she explained to him what Romilly had told her, only served to accentuate his depression.

When she had finished, however, she became more human; smiled, patted his hand, and tried to reassure him.

The renewed warmth gave him the first opportunity to express himself that he had in many weeks.

He had now crystallized, in his thoughts, some part of the cause of his unhappiness.

"They are not doing justice to my mentality. They are not considering my personal attitude. They are not considering my conscience, my theoretic background, anything, except in so far as it is consistent with the accusation against me. They regard me as a prisoner, an accused person, and I'm not really that. . . ." He brooded.

"Even Mr. Romilly is out of sympathy. He can't see that a man who believes, as I do, in a certain programme of progress, can't be guilty of an individual, selfishly directed, act of revenge or malice. He's only worrying about evidence of guilt. I resent that. Even if I'm guilty, I should expect to be acquitted, because people should realize that my character and my mentality are inconsistent with the accusation and the trial and everything."

She understood, and did not interrupt.

"Mr. Romilly thinks that Communists use conscientious objection as a Jesuitical device. But the Jesuit does not kill except under orders. Communism has got its intellectual difficulties; but we're not the damn fools that Mr. Romilly thinks we are. I do hope that, when he addresses the jury again, he will say something on those lines. You will ask him, won't you?"

He had been walking up and down the cell, and now he came and sat down by her, looking more appealingly than was consistent with the strength of his intellectual declaration.

"Certainly I'll tell him. I think he understands."

She was realizing that this was her first experience of

Armiger's intellectual quality. In the same moment she realized that his appeal to her was, after all, an intellectual appeal. Herself not without a moderate culture, she now felt more at ease with him and less emotionally committed.

"I think I understand you, too, Claude. I've had a Catholic education; and I can imagine what it would be like for a Jesuit monk to be accused of a selfish crime. Communism is your religion, I suppose, and you wouldn't be allowed to debase it to satisfy a grudge."

She thought for a moment, and became less speculative and more practical.

"Still, you must face facts. You're in danger, as if you were caught in a machine or something. Don't let religion blind you to that. I've been working that out for myself, too. Although I'm a Catholic I've decided to go for a divorce."

He showed interest, and the discussion of her problems seemed to relieve his mind.

On her way back she thought to herself: "I gave him first refusal."

Towards midnight Helen dropped in to Romilly's room, and found him working.

"Preparing your speech, Alfred?"

"I need more than a speech, Helen."

"What you need," she murmured smiling, "is a wife."

Next morning the Attorney said nothing about receipts—quite properly, because there was nothing to say.

15

CLIMAX AND ANTI-CLIMAX

As the Attorney stood up, next morning, to resume his cross-examination, more than one in the court noticed a pile of books near him, that had not been there before.

"Tell me," said the Attorney quietly, but in a very business-like way, "have you consulted with your legal advisers as to the conduct of your defence?"

"Yes, My Lord, I have."

"And, of course, you've had every facility to do so?"

"Yes, that's true enough."

"And you've been listening attentively to these proceedings?"

"Of course."

"Did you listen to your learned counsel's cross-examination of Superintendent Fremantle yesterday? Before lunch and immediately after?"

"Yes, I did."

"You remember the production of the drawer?"

"Yes."

"And of the bottles?"

"Yes."

"And what was found in them?"

"Yes."

"Tell me, then, Armiger, who instructed your counsel that all those bottles in that drawer might contain water?"

He leaned back against the bench and waited for the reply, which turned out to be the strongest he could anticipate, and which Hewitson had advised him to anticipate.

"I've no doubt my counsel was instructed by my solicitor."

The answer, which was a necessary evil, indicated to the Attorney what was a fact—that Romilly had carefully coached his client to meet the very difficult and dangerous attack now being directed against him. The Judge looked surprised.

Behind that preparation lay Romilly's experience. Years before he had seen a clergyman, who had unwisely given to his legal advisers material with which to attack the moral character of an opponent, brought heavily to earth with the question, "Who told your counsel that?" followed by, "Was that a Christian thing to do?"

In Ireland, however, where the law is a keener game and the pace harder, he had heard in reply to a similar question the formula which now issued from the mouth of Armiger. But a night of study and self-denial had prepared

the Attorney, slave-driven by Hewitson, to attempt to expose the clever evasion.

"Did you not tell it to your solicitor?"

"My Lord."

Romilly was on his feet. The question, which apparently outraged tradition, was *prima facie* objectionable at the instance of the witness, not (as Romilly was careful not to claim) on the ground that he was privileged not to disclose communications held between himself and his legal advisers, but (more subtly) because the question of the solicitor's source of information should not be raised. So Romilly.

"Will my friend argue it?" asked the Attorney.

"Perhaps we'd better have the jury out."

And just as the crisis was developing, the jury was marshalled out so as not to hear an argument as to the admissibility of a line of questioning on which might hang—more than their decision.

This, the legal climax of the case, consisted in a technicality.

As in many other courts and on many other occasions, a point on which depended the life or fortune of a prisoner or litigant became for half-an-hour the subject of an interesting, dispassionate, objective analysis of legal doctrine and practice.

The prisoner, all but forgotten, was sitting listening from the witness-box, in which he had been given a chair, and was enjoying the academic interest of the argument.

In the jury room the battle was swaying now in favour of the pig-faced man. And the Scotsman was retreating before a repeated "How did he know?"

The Attorney's question, by being asked, had prejudiced the issue; but, if Romilly's argument succeeded, the Judge would advise the jury so strongly that the question would prove ineffective.

In court Romilly was citing authority protecting the so-called solicitor's privilege (more properly, client's privilege), and with some ingenuity was covering the present case. In reply, the Attorney was able to point out that the authority amounted to no more than a

proposition establishing the right and duty of a solicitor, or barrister, to refuse to disclose, or reveal, without his client's consent, documents or verbal communications, given or made to him by a client with a view to legal process.

There was no reason, urged the Attorney, why the client himself could not be called upon to disclose his communication to the solicitor or to answer questions about it, if the questions were relevant on the ordinary rules of relevance. His learned friend's distinction was subtle, he said magnanimously, but did not succeed in evading the question that the court had to decide.

Nor was there lacking authority to prove that the solicitor's privilege did not cover the concealment of crime.

Against this Romilly contended vigorously that the privilege was absolute—otherwise litigation would be impossible (even the Attorney had respect for that argument); that, *unless it applied to crime, criminal defence* (which consisted in making the prosecution prove its case by evidence, and had no relation to moral questions of guilt or innocence) would also be impossible. Romilly argued, further, that the privilege could only be traversed (within the authorities) if it was alleged that the solicitor was party to the preparation of a crime, or that the crime was future to the communication. "And," he added, with all the emphasis and logic required to compensate for lack of authority on the point in issue, "all the benefit of the privilege would be lost if the communication that was protected in the client's favour when his solicitor was in the box ceased to be protected when the client himself came to be questioned."

"You are not suggesting, Mr. Romilly, that the question here is an incriminating question?"

Romilly, seeing the point, was not in a position to think out all the implications that reliance on that suggested ground might involve. His reply was subtle, but evasive. "Only insofar as any privileged communication may have something incriminating about it."

The point was not seen by the Attorney, who, addressing the court again (only Romilly suspected unnecessarily), was instancing occurrences in the civil court where

witnesses are asked as to their part in preparing the case; and was reminding the Bench, as Silks will, of the Bench's well-paid civil memories. He cited further authorities. Listening, few in the audience could have realised how, thinly, on these academic analyses (better than pedantic because in them was the distilled essence of British justice) depended the fate of a man on trial for his life.

The court, which seemed to be holding the ring without paying too much attention to the fight, seemed to solve its own problem, just as the Attorney was doing justice in the classical experiences of a black magician, who had been forced to account for his solicitor's possession of papers without the mediation of commonplace breaking and entering. The Judge had by now made up his mind that a client is in a different position from his lawyer. Some judges would have given the defence the benefit of a legal doubt. This Judge, however, emerged with no doubt as to the law, and had the moral courage not to hide behind sentiment.

"I must allow this question, Mr. Romilly," was the final pronouncement—less melodramatic but far more significant than any finding of guilt by a jury.

The Attorney had won, not without difficulty and good fortune; but in Romilly's opinion rightly. He could not press the matter farther. As the Judge pointed out, there was always the Court of Criminal Appeal. Whereupon the jury was recalled and the prisoner caused to resume his place in the box. . . .

Said the Attorney quietly: "Can you tell me, Armiger, how did your solicitor know that the bottles in that drawer were empty of insulin?"

Armiger was driven back on an irrebuttable but unsatisfactory answer: "I don't know."

The Attorney was entitled to press the point, and he did so, cautiously and effectively.

"You heard the evidence of the Superintendent?"—"Yes."

"It is clear, is it not, that after the death of Judge Gosling no one other than police had access to that room, or that drawer?"—"I agree."

(Romilly's argument to the Superintendent was now being turned effectively against him)

"And your counsel has made it clear, has he not, that before the death there was little opportunity for access to that room?"—"Quite."

"Then how could your solicitor, how could anybody, be in a position to know the facts that your counsel yesterday revealed to us?"—"I don't know."

"Your counsel produced that information?"—"Yes."

"From your solicitor?"—"Yes, presumably."

"Presumably from someone else?"—"Yes."

The Attorney's next question cleverly deprived Armiger of the chance of asserting his own innocence.

"Then am I not right in inferring that you must know more than you are telling us?"—"I swear to you that I don't."

"Well, we'll have to leave that for the jury to decide."

The Attorney sat down at this, the strongest phase of his case, and there was nothing Romilly could do in re-examination to redress the balance that had been so suddenly and convincingly weighed down against him.

The last bleak prospect of defending counsel, the prospect of relying on the jury to believe his client even if the latter be telling the truth, was one that filled him with no confidence.

When Armiger left the witness-box, the case against him, as reflected in the minds of the jury, was disproportionately stronger than when he had entered it.

Before he entered the box, the relatively neutral—or non-belligerent—elements in the jury were prepared to see and hear a weak, hesitant, nervous, cowering fellow whom they were prepared to despise with a view to acquittal. When Armiger left the box they had seen and heard a vigorous, independent, unsentimental person, utterly unlike their conception of a conscientious objector—utterly unlike the timid, shrinking, confused, self-contradicting, victim of circumstances that juries delight to acquit.

Withal he had been placed in a position of more suspicion since entering the box than had attached to him before the case began.

From the standpoint of evidence, the case was now weaker. From the standpoint of the jury it was stronger.

Earlier, Romilly had damaged much of Williamson's evidence and sufficiently mitigated the inferences, and made good enough use of the time factor to give the jury the bit of doubt they needed. Nevertheless, evidentially, there was a case, because time was not of the essence. Romilly had endeavoured to disprove that case positively. In that he had failed.

The evidence that he had elicited, which, by making time the essence, and by presenting a real problem in the understanding of the crime, seemed completely to upset the prosecution's argument, had in fact re-established it. Worse, this evidence entangled the prisoner in circumstances of suspicion, additional to the *prima facie* case. This network, unless the Judge cut strongly through it (and he seemed at this stage disinclined to do so), would hold the prisoner helpless against the unfriendly operations of the aggregate of twelve ill-trained intelligences.

As Romilly prepared to address the court it was clear to him that much that might have been important had become completely unimportant. The spotlight had moved. In the background was the *prima facie* case—and the answer to it. In the foreground, brightly illumined, was the new suspicious circumstance of a knowledge that an innocent man should not have. This tree had again blossomed guilt. Looking at the faces of the jury, and watching their discussions, Romilly knew (as well as if he had overheard) that one was saying to another, "How did he know about all those bottles?" and on that theme variations were being played on a dozen tongues and through a dozen minds. "He's a chemist." "He was living in the same hotel." "He was making sure." "The girl was in it with him." "Of course he did it." These, and other observations to the detriment of the prisoner, were in fact being made in the jury-box in tones varying from the whispered common-sense conviction of a housewife, through the whispered malevolences of a never friendly but now hostile commercial traveller, to the now apparently dispassionate but thoroughly cruel "It would appear so" of the victorious pig-faced man, become foreman. The latter now bore the sanctimonious

expression of one who declared his unwillingness to hit a man when he is down.

Someone was pulling at Romilly's gown.

Helen Davenport was whispering to him: "Mr. Romilly, let me go into the witness-box again, and say I found the bottles."

That offer, ridiculous as it was (at this stage), and rejected with a wave of the hand, did, however, restore Romilly's belief in humanity and the loyalties, sufficiently to make his speech and his remaining efforts in the case sincerer and better than they would have been; for there is no better test or proof of the trueness of human feelings than a woman's readiness to commit perjury.

Nevertheless, Romilly was not at his best. There was too much behind his mind for him to be able to capture, or recapture, that tone of oratory that nowadays rarely sounds in law, even in the Criminal Courts.

There was more than a little irony in the fact that Romilly, who had let himself drift to the Bar, in the first place, because he had confidence in his oratory, and an erroneous belief that oratory mattered, should now, given an opportunity for oratory, feel incapable of any flight in which he could trust himself to rise above an unconvincing rhetoric, a parade of personality rather than mentality, which would not convince himself and might not convince others. Years of practice in the law had filled him with so much contempt for false oratory, and such a jealous distaste for those ignorant but well-paid juniors who babbled of green fields and invoked "the quality of mercy", which "is not strained" except by bad advocates, that himself took refuge in almost an extreme pedantry, which is related to intellectual integrity as prudery is related to chastity.

Perhaps, in addition, a certain laziness (the same laziness that had caused him to escape from science and literature into law), perhaps an obsession with the difficulties of the evidence and a resentment at having to conduct a defence that should not have been necessary—perhaps these, coupled with a greater consciousness of responsibility than should darken the outlook of counsel,

combined to make him over-analytic, and less possessed than normally by the intellectual and æsthetic unity which constitutes a good speech for the defence.

He had a theme—the nature of circumstantial evidence—but that only gave an apparent unity to a manifold of diverse arguments. Yet, to a jury listening patiently, a little kindly (for juries are kind to counsel), considerably albeit unagreeingly (for most of the time and for no good reason), Romilly exposed the weaknesses of the prosecution's case so convincingly that only their natural stupidity and obstinacy and an acquired intransigence protected their minds from him; so that he would have captured irretrievably any mind that was not already made up against him. Not Pericles or Demosthenes would have altered the thoughts of such an audience, just as in another place not all the harmony of mind and personality that was Gladstone, nor all the brilliance and emotion that was Bright, ever succeeded except fortuitously in changing the lumbering thoughts of those that were their peers.

He told them that they were trying a case grounded in circumstantial evidence. There was nothing wrong in that. The Judge would tell them (Romilly was here purposely stealing his thunder) that circumstantial evidence could be very strong in its effect, at times irresistible. But if circumstantial evidence was not convincing, it was nothing. By calling it circumstantial evidence the jury were not saving themselves from the task and the duty of deciding whether the evidence constituted a convincing proof of conclusions that they could not doubt.

And first, they must exclude from their reckoning any disagreement with the principles of, any dislike of the attitude of, any dis-sympathy with the personality of, this conscientious objector. If they wished to believe that he was a conscientious objector, let that be counted in his favour. Such a man would not take life. If they did not wish to add that thought in his favour, then let them treat him as if he were their conception of a patriot. The English law says nothing against conscientious objectors. But even if it did, the spirit of the British law was such that a man's character was never invoked against him, and the

veriest traitor, if charged with a crime, was given by British justice a fair trial, even when the enemy was at the gate.

Let them not infer that he accepted any accusation against his client. They had seen him. Perhaps they would think that he looked a good man, a young, enthusiastic man, a man with beliefs and hopes; which they would appreciate if they did not share. Such a man did not commit crimes. Even if he belonged to a school of thought that they might think alien, yet let them remember that his was disciplined thought, unlikely to be tempted to a manifestation of selfish passion (Armiger was pleased with this and felt grateful). And below his thoughts, let them think of his character, his personality. A young man. Such a man had too much in his mind to live for, too great a sense of futurity, too much of high spirits, to feel the vindictiveness, to take the appalling risk of self-immolation, that was involved in the act of murder.

He would suggest that the prosecution would never have been started except through an unfortunate, indeed a wicked, prejudice against the personality of the prisoner. They had heard of the anonymous letter, irresponsibly accusing "the Conshie". They, possibly, had their views on the authorship—the discredited authorship—of a discredited document. In that document the very terms were symbolic of the vagueness and unreality of the original accusation.

The melodramatic figure of a man "hanging about" (whatever that meant) "for an hour". This wicked letter—the handiwork of a hostile, dishonest, ill-disposed mischief-maker—what was left of it, save that a hopelessly discredited witness had sworn on oath to nothing more than that he had seen somebody passing the Judge's door during an air-raid alarm? Could they believe that this man ever saw the prisoner? Would they not rather believe that (to put it charitably) he might have seen someone whom, out of spleen and malevolence, he convinced himself to be the prisoner.

Even if he did not write the anonymous letter, of what value was this flunkey's evidence? Even if it was true, what did it prove? A circumstance at most of suspicion,

to be added to other circumstances of suspicion. His (Romilly's) submission was that it was even less; and he invited them to thrust it from their minds if, indeed, they had not already done so.

But that was not enough. The jury had been presented with a number of what the prosecution regarded as suspicious circumstances, and these were described to them, by the Attorney-General, as circumstantial evidence.

He, Romilly, would be prepared to admit that things found out, even through a dishonest agency, were evidence. (Here again Romilly, relying on good authority, was stealing from the Judge some hostile thunder.) But when what was found was mere suspicion, could it be shown as flowing from the tainted source of the suspicion—and the stream called circumstantial evidence?

With the greatest respect to the Attorney-General, that view of evidence was wrong, hopelessly wrong. Circumstantial evidence did not mean the addition of two doubtful points to make a certainty. It meant the fitting together of reasonable probabilities to cohere into a moral certainty. Two noughts added up to nothing—and multiplied to nothing.

It did not justify the jury in believing or taking into account the incredibly weak (if not the incredible) evidence of a man like Williamson, and the giving to it of importance because it was remotely consistent with the prosecution's suspicions attaching to other and quite independent aspects of the evidence. Two probabilities the jury could add or multiply together. Two suspicions they must not add together.

At this point the neighbour of the pig-faced man saved the latter from the danger of a temporary scepticism by making a note, on the pad in front of him, that the prisoner had admitted being in the neighbourhood of the Judge's room.

"Suspicion, eh?" muttered one on the back row, whose eyesight was good enough to see this enlightenment.

The Judge was sitting back, listening carefully and inscrutably. He too was critical—but of both sides, not of one.

Romilly, who, like all orators, was conscious of whatever degree of sympathy suffused his audience, continued his analysis in the full consciousness that the court was not entirely with him. His thought-waves were not penetrating the mental wall in front of him. Nevertheless, he continued to throw his mind against it. He was becoming analytic now: adding examples of unreliable suspicions. These were the things that were found in consequence of the mischief-making of a corrupt mind.

They found insulin and pituitrin in the prisoner's own laboratory. In a chemist's laboratory what was amiss with this? Was the prisoner's explanation improbable—or even suspect?

A bottle had been broken. What an edifice was erected on that broken bottle! Because that was the only possible criticism that attached to the presence of these materials in a correct container in the laboratory of an organic chemist. The stuff was in a less compact container than it might have been in. Why not?

He would go farther, and use that fact in the prisoner's defence.

Could it be said that there was anything surreptitious here, any attempt at concealment? Anything of the type associated with murder—with murder of the type of poisoning.

Indeed, the jury might profitably reflect that for a chemist to commit a crime of this type was itself an improbability because of the high probability of suspicion attaching to him. Lest that be discounted as an argument, surely it would be most unreasonable for a chemist to injure or kill someone by means of his knowledge of chemistry, and yet leave his scientific implements lying about where anyone could find them.

(Commented one juror on the back row to another in a whisper: he didn't expect the police to burgle his place.)

As if telepathically influenced, Romilly replied, by adding, "And would not a murderer expect the police to search his premises?"

Said the juror to himself, "He never expected to be suspected"—and, conscious of the weakness of this, "He had no time." The combination of two half-truths satisfied him.)

Other suspicious circumstances were the book-throwing incident and the so-called threat.

Here, too, was it not reasonable to suppose that a man who threatens violence does not risk murder? Psychologically, people who threaten violence do not commit murder. At all events, what was there here other than hysteria; and was that hysteria—was not the whole honest—over-honest—character of the prisoner—not entirely incompatible with the cold-blooded planning involved in the crime described by the prosecution? If indeed there was a crime at all, and the whole series of events was not due to a mistake in a laboratory.

(At this point the Judge made a note. The suggestion now put forward had to be dealt with firmly.

Romilly had not invoked the original doubt as to the cause of death. He feared the dissipation of attention that this might involve. It was the Judge's duty to rule it out of court if he thought there was nothing in it. Romilly kept, meanwhile, to firmer ground). He invited the jury to analyse at every stage the prosecution's synthesis of doubtful propositions to constitute evidence.

Those words 'analyse' and 'synthesize' were doubly important. The prosecution's witnesses had agreed that they had been unable to demonstrate by the exact analysis of the laboratory the nature of the substance that had been introduced, if any had been introduced, into the insulin. These substances could not be synthesized—could not be analysed—could only be conjectured—seeing the Judge make a note, he elaborated—could only be recognized without the certainty of exact identification. But the prosecution could synthesize—could dogmatically state—pituitrin was there. Why? Because it was in the accused's laboratory. Let the jury analyse that!

Romilly went on to motive. He ridiculed the idea that a young man, an idealist, a man with a belief in the future and with a future ahead of him, should, out of arrogance, or out of fear of a prosecution for assault—at best a minor offence—have taken the life of the Judge of the Tribunal—and that in such circumstances that it would not alter his own position except in the most unimportant way. The motive alleged (and the prosecution shifted between weak

motives in order to create a strong motive) was pitifully inadequate for a crime of the greatest gravity and magnitude. Could the jury believe that trivial incidents and trivial fears could in two days—nay, in less, for they must allow for planning—transform a conscientious objector, or a coward if they wished, into a monster of malignance and a master mind of criminality?

Not on these bases could they establish that the prisoner had done the complex and patient acts of murdering attributed to him. What, then, had the prosecution proved? At the very most opportunity. He would show that there could be no opportunity.

But what was opportunity? What did it amount to? Circumstantial evidence did not mean that because X or Y could have done a thing, therefore they did it. There was a clear difference between this case, for example, and the classic case of the man running out of the building with a bloodstained knife in his hand. In the latter case there was a reasonable induction of cause and effect. Here somebody may have killed a man—and X or Y was in a position to do it. Where was the bloodstained knife? Some insulin in the test-tube? Some pituitrin?

(Romilly had gone too far. These, said the Judge to himself, are the bloodstained knife.)

In this way, Romilly analysed away most of the constituents of the evidence against Armiger. But that was not enough. He knew that the jury would accept the Attorney's synthesis against his analysis. It remained (he said) to prove the prisoner's innocence positively. That was not necessary in English law, but he would undertake it.

There had been evidence showing that Armiger could not possibly have committed the crime in the time available to him; and this on the prosecution's own showing. It was difficult enough to interfere with twenty bottles of insulin. The jury now knew that fifty or sixty had been interfered with. He asked the jury one question: When?

The Attorney-General, with understandable curiosity, wanted to know how the defence had discovered this remarkable fact. Unfortunately the Attorney-General's curiosity had not been satisfied.

But did that matter? The defence had shown that it was physically impossible for the prisoner to have done the things alleged against him. Did they require more than that to justify them in dismissing for ever this fantastic attribution to a man of character and intelligence of an improbable—of a completely unproven—crime?

To make a harmonious finish he reverted back to his original key. If this case was based on circumstantial evidence, let them at least give credit to a circumstantial argument drawn in favour of the prisoner. They had heard of the benefit of the doubt. They would hear more of it from His Lordship. But here was more. Here was a counter-demonstration in favour of the prisoner. Even if they discounted it, the doubt remained. And that doubt would be sufficient to acquit the prisoner, unless they traversed the whole spirit of the law and found a man guilty because they could feel no sympathy for him. He did not ask the jury to use sympathy in order to discredit any truth. They would not, however, begrudge some degree of sympathetic understanding in accounting for the (at worst) eccentricities of a man whose faults and misfortunes had placed him in peril of his life.

He was a conscientious objector. All the more reason why they should be conscientious jurors. Need he express the hope that they would demonstrate their collective conscience in their verdict?

As he sat down, he found a note in front of him, scribbled by the Attorney: "A very fine speech indeed." This generous compliment gave him no pleasure.

In reply the Attorney-General (assuring the jury that it was not his function, his duty, or his pleasure to try to add to the evidence any speculations of his own, nor to criticize pedantically the brilliant forensic effort of his friend) concentrated on the making of one point. The prosecution were not concerned to prove that fifty or sixty bottles were interfered with on the Wednesday night.

As to the Wednesday night, they were only concerned with the bottles on the table.

They did not even say how the process had been done. Armiger could have taken a cellarette out of the Judge's

room, back to his own, interfered with it, and back again. He had the skill—and the time.

If other bottles were interfered with, that was not a charge against the prisoner. The fact that more were interfered with did not prove that the lesser number had not been interfered with.

For the rest, it was a remarkable circumstance—let them treat it as they would—that the knowledge of the curious fact of their interference was in the peculiar knowledge of the defence, and that in an unexplained way.

Let them treat that as a circumstance—a suspicion, his friend had said—or perhaps, more properly, a sinister feature in the background of events that they must treat as a whole, looking at them reasonably together, as the circumstances of an appalling crime.

They should not analyse everything away to absurdity. If a fact was to be dismissed, let them dismiss it. But facts are not isolable things. He offered them a series of events which together pointed a certain way. A threat—a death—the possession of the raw materials of the crime—every opportunity—add to that every motive.

If, as reasonable men and women, the jury felt that this evidence pointed in a certain direction, and they were satisfied of that beyond reasonable doubt, they would do what they knew to be their duty. If they were in real doubt, then by all means let the defence succeed.

The Judge was thanking the jury for their patience (the evidence of this being that they had sat in the jury-box for three days, having no option), and commenced a recital of facts. He described places, times, persons. He felt it safer not to make his summing up into an argument. While reciting facts, he was thinking ironically and sadly that Armiger's life might only have value to the future as the occasion for a judicial decision clarifying, but not adding to, the law of evidence. He continued to recite facts, until a point presented itself. The bottles had been tampered with. That might be taken as established.

"Members of the jury, you will probably take the view that the laboratory assistants and workers who gave

evidence would not be likely to allow the bottles that they supervised—that is, all the bottles the subject-matter of this inquiry—to go out in any state less than perfect. If you think that (remembering what I said about doubts), then you may also take the view that interference took place after the bottles were ‘made up’. But you must satisfy yourselves of this before you proceed any further in your deliberations. If you have some doubt about this, you will acquit the prisoner.

“You may also have no difficulty in believing that the people who handled and sold the insulin were responsible people (you saw them), and that they, too, are unlikely to have interfered. If that is true, then it is hard to see how the bottles could have been interfered with before Judge Gosling received them. . . . Here again,” he added, “if you feel that this is not certain beyond reasonable doubt, you must acquit the prisoner.”

The Judge realized that his warnings were too wide to be useful: but he had decided to “follow the facts”, and could not do otherwise now.

It was also hard, he explained, to see why Judge Gosling should have interfered with them himself (there was no evidence that he did or could have done so—or that he had any pituitrin—perhaps that did not matter). Then if they were interfered with, were they intentionally interfered with, while in his possession? It seemed reasonable to suppose that they were.

And here, too, the jury must be very careful. Interfered with? How interfered with? The prosecution said: by the intermixture with the insulin of pituitrin. The defence, rightly and ably, pointed out that insulin and pituitrin being unanalysable substances, it was not possible for the witnesses to say that they were sure it was pituitrin as they might have been sure it was a chemical substance, like common salt. The jury must give this argument full weight. The prosecution’s answer was this (the prosecution had not given it, but the Judge was giving it): that expert witnesses said they recognized it as pituitrin. They were experienced men—they thought, in their opinion it was pituitrin. They did not think it could be adrenalin.

They weren't dogmatic, but they said the facts were consistent with pituitrin. That was circumstantial evidence—not a certainty, but a consistency: a consistency with other facts, sufficient to create probability.

(The Judge was not yet saying that the jury could link up the conjecture of pituitrin with the existence of pituitrin in the accused's laboratory. But he did not invite them to treat the question of pituitrin as an isolated question. Instead, he said):

"If, members of the jury, all things being considered, you are doubtful whether it was pituitrin or not that was inserted into the bottles, you will acquit the prisoner."

Romilly knew that on that direction the jury would find that it was pituitrin.

The Judge went on. Given interference, it might also appear to the jury reasonably probable that the interference with the bottles was the cause of death. Any doubt there, the defence was entitled to the benefit of it. If the Judge did not die as a result of tampering, then no case existed against the prisoner. The defence had not pressed that doubt very hard. That did not dispose of it. But was there anything in it? (This was charitable.) The jury would think of it carefully, and decide on it in the light of the medical evidence, and their own critical faculties—which they must apply conscientiously and fearlessly.

Then, making it cautiously clear to the jury that intentional interference, if established against the prisoner, could be reasonably regarded as the cause of death, and that such a cause of death would be murder, not manslaughter, and dismissing the possibility that a practical joke might have been attempted (a doubtful defence), the Judge proceeded to ask himself and the jury what the evidence was that linked the prisoner with the act of interference.

There was one circumstance. The prisoner had possession of insulin—and of pituitrin.

The Judge took the responsibility of saying that that was some evidence linking one to the other. It was circumstantial but evidence. It was for them to say as

to the weight of it, and what it amounted to. He explained that circumstantial evidence did not mean mathematical certainty—it meant high inductive probability. Two doubtfuls could not be added together. Two probabilities could, but not without great care.

He took the responsibility of saying that these, the insulin and the pituitrin, might be regarded, if the jury chose so to regard them, as analogous to what counsel for the defence had referred to, in his exceptionally able speech, as the blood-stained dagger. He warned them to notice that he said "might be regarded", not "must be regarded". If there were other circumstances amounting to a probability—a high probability—consistent with the prisoner's alleged activity against the deceased, then they might add to it, as a probability (if they so regarded it), the chance that the insulin and pituitrin found on the prisoner's premises could have been related in some way to Judge Gosling's bottles. It was for the jury to consider whether there were probabilities to which this could be added or not. (The Judge was purposely being vague, because he feared that, if he argued it, he might argue it against the prisoner. He was trying to compensate for his finding against the prisoner on a point of law by trying not to let the facts seem too convincing.) He would remind the jury that in thinking as to whether there was anything sinister in the prisoner's possession of insulin and pituitrin, they should remember that these were less questionable in the possession of a chemist than if they had been found in the possession of a woodcarver or a tinsmith.

These things were found in the prisoner's possession. They must not attach any importance to the way they were found. The prisoner had protested that the police had stolen things from his premises. That was not fair to the police; and it did less than justice to the prisoner's case. Nor must they attach too much importance to the fact that the police enquiries were made in consequence of a, possibly, wild accusation which they could disregard. The only important thing was what was found. Let them forget the history of the finding. Mr. Romilly had quite properly agreed that that was the correct attitude.

It was relevant and important to consider whether the prisoner could explain his possession of these things as other than weapons, or things relating to Judge Gosling's medicine. The burden of evidence was on the prosecution. But the prisoner had volunteered an explanation. (The Judge did not add that he was wise to do so.) His explanation was that he was conducting experiments. That was not improbable. It was a question for them whether they believed that his experiments accounted exclusively for his possession of these things. If they believed that explanation, it was strongly in the prisoner's favour; perhaps he ought to say, conclusive. The prosecution regarded the explanation as unconvincing. The accused had brought no evidence to support the account of his work. He was not bound to do so. The burden of proof was on the prosecution. Nevertheless the accused had himself mentioned his possession of some literature on the subject—but there was no other evidence of this. Perhaps there was not much in that by itself. It was for the jury to say whether they accepted this or not. Then they must consider one curious circumstance: the absence of the usual form of container. That was not decisive, but it was a circumstance. He did not share Mr. Romilly's view that this could be treated in isolation from the rest of the case. By itself, it might be a triviality; but it must not be regarded as abstract from other facts. Rather it was a circumstance among other circumstances. In believing or disbelieving anything they were entitled to treat the events as a whole. It was begging the question to assume that separate things were not separate. It was also begging the question to assume that things that might reasonably be related were separate. Let them not over-estimate the laboratory evidence, and let them not disregard it unless they were satisfied that it could be disregarded on its merits. As to the merits, the prisoner had given an explanation of why the insulin was not in a proper air-tight container. The prosecution had criticized this; it was for them to weigh the merits. After all, the prisoner was a chemist. He knew about air-tightness, etc. They must not attach too much importance to the failure.

by the police to find a broken bottle—or to any one thing, for that matter. On the other hand, the prosecution said, in effect, that the leaving of insulin in a non-airtight container implied that it was not being used, but was waste. (Here the Judge was stating the prosecution's case better than the Attorney had stated it.) Against that, the prisoner said, I am a chemist, and I know that the degree of airtightness in my container was sufficient for practical purposes.

The Judge did not add that this was a bad answer. But his general treatment was against the prisoner, precisely because he did not feel justified in asking the jury completely to disregard the laboratory evidence. Romilly listening, realized that the Judge had established the *prima facie* case; realized, too, that it seemed unlikely that a summing up in this style would finish in the complete acceptance of that counter-argument which the Judge seemed to be putting off as long as he could. The jury, meanwhile, felt, rather than deduced, that the Judge was not satisfied with Armiger's account of the laboratory evidence. Nor did it alter their minds when he told them not to over-estimate the possession by a chemist of insulin and pituitrin when he renewed his warning that if they had doubt on this issue, as on any other important issue, they must acquit the prisoner. Nor did it help them to be told that the prosecution must present a coherent whole of evidence, and not a collection of disconnected suspicions.

The Judge then dealt with the opportunity of interference. Opportunity by itself was nothing. What was alleged here was opportunity at a certain time and in circumstances that suggested that the opportunity might have been taken. The jury might think there was *some* opportunity. He would not say that there was none; but he would deal with one criticism of it later on. Meanwhile, let them notice what was alleged. It was alleged that the prisoner was near Judge Gosling's room for some time—quite a short time, perhaps twenty minutes; not necessarily outside all the time, but near enough at one moment to have been within reach of the room. This did not hang

on Williamson's evidence alone. Williamson was not a perfectly satisfactory witness. The jury might suspect that he wrote an anonymous letter. That was not proved; and was not important. Let the jury bear in mind that in one particular, to which they would limit Williamson's evidence, Williamson was corroborated by the prisoner. The prisoner himself said, "I passed the door. Williamson might have been there." That did not take the matter very far. But let them remember that apart from Williamson they had evidence as to how near the prisoner's room was to that of the deceased. He handed to the jury his plans of the building to take with them when they retired.

In order to be able to start to convict the prisoner, they must be satisfied that what was done was done on the Wednesday night, between about twenty-five to ten and five to ten, or not at all. The prosecution suggested that the air-raid gave the prisoner an opportunity. Even then, of course, he would be taking a risk, because people move about during air-raids. On the other hand, one's own movements were more explicable during an air-raid. The point had been made that the prisoner could not have planned for an air-raid. The prosecution's suggestion was that he had been waiting for an opportunity; and that he took it. The thing was arguable; both considerations must be considered. Perhaps neither was final. Yet this might properly be regarded as part of a whole, to be considered as a whole. If, however, there was any real doubt as to the opportunity, that was an end to the case against the prisoner.

There was another point about this opportunity, which he would deal with later. But at the present stage what they must consider was whether the prisoner had time to interfere, quite carefully, and reasonably skilfully, with twenty bottles. (Here the Judge was in a difficulty. He had indicated earlier in the case that he attached no weight to any question of graduation. He assumed there was no graduation. Consequently, he could not now use graduation in favour of the prisoner as an argument that he had no time.) The prosecution said that the prisoner

was a skilful chemist who could have done it quite easily—that is, interfere with twenty, or the majority of twenty, bottles. The prisoner said no, far too difficult. Let them remember in favour of the prisoner, what had been used against him, that he was not primarily an insulin worker. Here again was a question that the jury must decide for themselves. If they decided that the prisoner couldn't have done it in the time, or if they were in doubt on the whole question, let them acquit the prisoner. (Again those interested noticed that the Judge had firmly resisted a temptation to decide the matter for the jury in the prisoner's favour. It was clear to Romilly that the Judge would be against him on the final point. As for the jury, they, not having been told to disbelieve the prosecution, were prepared to believe it.)

Before coming to the final argument of the defence on the time factor, the Judge dealt briefly with the threat. He advised the jury not to attach too much importance to the threat as threat. They were wild words. But they were evidence of hostility. Evidence of hostility, evidence of motive, was not to be ignored. It did not constitute evidence where no evidence existed. But here he would not ask them to ignore it. On the other hand, let them not over-estimate it. There was reason to suppose, unfortunately, that the late Judge Gosling was not as well liked or esteemed as a County Court Judge should be. If they thought that the motive was not violent enough, or was vague, let them not set much reliance on it. It was a very small part of the case. What mattered was evidence of conduct at the relevant time, rather than state of mind. On all these matters, whether of fact or of state of mind, they would give the prisoner the full benefit of any doubts they entertained; not speculative doubts, but doubts left after full consideration—doubts that slightly worried them in their consciences as jurors. There was one other matter, of gravity and anxiety, that he would direct them on to-morrow.

When Romilly, at the rising of the court, spoke to Armiger in his cell, the latter had reverted to some degree

of optimism, and was construing what he remembered of the summing up as favourable to his chances. Indeed, he had failed to retain the grip on reality that was necessary in order to make him understand that they were only chances.

"The Judge is on our side," he pronounced, as if he believed it; and the other did not disillusion him, if he had any illusions. There was no point in filling him, at this stage, when he was helpless, with anxieties that Romilly himself, who was not yet out of the ring, felt to be defeating him.

During the day the mind of the prisoner had become more appreciative of his counsel.

"Whatever happens," he volunteered, "you've fought splendidly."

Helen Davenport, entering the cell at that moment, noticed that Romilly, normally appreciative of praise, was making a desperate effort to conceal the unhappiness that this praise caused him to feel.

As he saw her, Armiger seemed to be reminded of something.

"Those bottles," he said, speculatively.

She wondered what was coming next, but he seemed to change, with an effort, the direction of his thought.

"They are convincing, aren't they?"

Romilly produced a masterpiece of evasion.

"If this Judge and jury don't think so, we'll see what the Court of Criminal Appeal think."

"At all events," commented Armiger, "my conscience is clear."

Helen Davenport walked back to the hotel with Romilly. In the last two days her sympathies had moved, all but imperceptibly, even to herself, from the youthful earnestness of the conscientious objector to the older, more cynical, but altogether tougher, and altogether more human, determination of the no longer young advocate. Also she was beginning to feel conscious of a new depth that she had not suspected—a depth in the man and in the problems he was so resolutely facing. Paradoxically what had been emotional contact (with Armiger) had become

intellectualized—and here an intellectual relationship had emotionalized itself.

"Partners in crime," she thought, but she did not say it—and she meant that that was more than partners in the meritorious.

The conversation turned on the case.

"When the Attorney-General spoke first," she confided, "I did not see what could possibly be said, or how you could stand up against him. But when you spoke I thought you were the better barrister."

"So I am, my dear," replied her companion, accepting the flattery in the spirit rather than the ambiguous letter.

He took hold of her arm. She squeezed his arm, as she realized that she had committed a *gaucherie*; and decided that life with Romilly might be very liveable.

"The Judge is against you, isn't he?"

"Against us," murmured the other.

"Can anything be done?"

Romilly was tempted to a frivolous reaction.

"You wicked woman, you weren't thinking of blandishing His Lordship in some way, were you?"

"Well, I was. I have a feeling of responsibility. . . ."

"Don't try anything. But what do you mean by responsibility?"

"He mightn't have been in this position, but for me . . . would he?"

Romilly's counter-question was exceedingly careful.

"You don't think the jury regards him as a murderer, do you?"

"He looks such a fanatic."

"But fanatics of his type don't kill people. And they don't declare their intention. Perhaps, my dear"—this he spoke rather reflectively, as if speaking to himself—"perhaps you don't realize that there is a fanaticism different from his, which is compatible with great subtlety, and which can kill people."

She understood enough of the thought to look intelligently puzzled. Romilly rescued her with a question.

"Do you think he looks guilty?"

"Don't you?" she replied.

"There," said Romilly solemnly, more to himself than to the other—"there speaks the jury."

The jury had been confined, and continued to be confined in the George Hotel, a quiet, unpretentious inn, within a stone's throw of the Dragon.

There, it happened that Hewitson's clerk, oozing unobtrusively from the urinal, overheard a critical conversation.

One of the jurors, who so far had said very little, and on that account was deemed wise by his fellow-jurors, was confessing to the pig-faced man:

"Yes, old chap, I'm certain you're right. He's as guilty as hell."

To Hewitson, the clerk brought this item of news as a dog brings a bone to its master. Hewitson's reaction seemed, to whomsoever heard, to be but a poor reward for loyalty.

"You damn fool, you mustn't tell me that. I mustn't know that. I don't know that I ought not to tell it to the Judge and get a new jury panelled."

Hewitson knew very well that he wouldn't. Indeed, he was delighted with the information. Subsequently an extra sovereign, given for no apparent reason, would soothe any feelings that he had injured.

Neither Hewitson, nor his clerk, could have known that Helen Davenport had caught a fragment of the conversation, and had not scrupled about listening carefully to the rest.

Helen Davenport burst into Romilly's room with the news seething within her. Romilly, greeting her from his armchair with a "Come and comfort me", pulled her on to the arm of the chair, where she sat breathless and disinclined to disturb with articulate utterance the atmosphere of confidence now completely created.

When she finally told him what she had heard, he almost as unceremoniously extruded himself from the chair, and

paced the room without speaking for several minutes. Finally, he stopped in front of her.

"Do you think another jury would give us as good a chance as we may still have with some members of this?"

He did not expect an answer to this question, and went on talking, or thinking aloud.

"With this jury we've achieved a degree of surprise not likely to be recaptured with any jury. We've got the Judge surprised, and he still hasn't said the last word against us, though he is generally unfavourable. Something may yet operate to make him wind up decisively in our favour.

"On the other hand, if I tell him about this, he'll dismiss the jury and panel a new one. It won't be enough to get rid of the two offenders. He won't even ask them who they are, because the very mention of the matter will, in his view, prejudice them sufficiently to make them useless as jurors. Will you leave me to think, Helen?"

"Yes," she said. "I've got a lot of typing to do."

She gave him a quick, but affectionate kiss, and left him.

He, too, had thinking and writing in plenty ahead of him.

Departed from Romilly, Helen Davenport found her way round to Brennan. With him she exchanged some pleasantries; but did not fail to receive the impression that the hardened old solicitor was worried about the case and pessimistic as to the result.

"We need a miracle, don't we, Mr. Brennan?"

Brennan, mentally agreeing, pooh-poohed the idea.

"Suppose," she asked speculatively, "the Judge suspected somebody else, would he order Armiger to be acquitted and the other to be prosecuted?"

Brennan smiled benevolently. He was glad she hadn't asked anything harder than that.

"I doubt whether there'd be any prosecution of anybody else. But he'd acquit the prisoner. But don't go hoping for miracles, my dear young lady."

Somewhat despondently she returned to her room.

As she passed Romilly's door, she heard the noise of a typewriter, and she decided not to disturb him. She continued to her own room, there to type and re-type carefully but dejectedly.

Much later in the evening, walking along the corridor carrying an envelope, she noticed that paper was protruding from under Sir Horace Harwood's door. She stopped and wondered whether she dared pick it up and read it.

Inside the room, Sir Horace Harwood was saying to Roper:

"I'm worried. I can't do what I want to do for Armiger. On the other hand, I feel guilty. Many of my less pedantic brethren would have upheld Romilly on that point of law."

16

CONSCIENCE TRIUMPHANT

AT breakfast in the Judge's lodgings a conversation was taking place between Sir Horace Harwood and his Marshal.

The Marshal Roper, whom we have seen, a lean youth, with the ascetic face and straggling forelock that bespeak the well-connected, and the air of fatuity that serves to conceal intelligence, was handling the typescript that had been pushed under the Judge's door late the preceding evening.

Said Sir Horace, "You are agreed with me, Roper, that we can draw no inference as to any particular author from the style."

"It's very ordinary, sir."

"No, it's not ordinary—not ordinarily ordinary, I mean. It's painstakingly ordinary, but successfully ordinary. An ordinary person writing to a Judge would have used fewer ordinary words. This is almost basic English.

One might think that a good Greek scholar had composed it, it's so simple. Yet from that we can't infer that anybody in particular wrote it. There really is no identifiable colour. I'd wager also that a lawyer wrote it. But I should hate to have to prove it."

Said the Marshal, "Hewitson read Classics and Law. Romilly read Natural Science Prelims (including Chemistry I believe) and Greats."

The Judge pondered.

"What are we going to do about it?"

He commenced re-reading it quietly, but audibly.

"DEAR SIR HORACE,

'I believe that if a Judge knows something that has not come out in court, his conscience will make him act upon it, especially in order to save a person's life. . . .'

"That," commented the Marshal, with the freedom that is allowed to these chosen cupbearers, "depends on whether the Judge has a conscience."

"No," corrected Sir Horace; "depends on what kind of conscience he has. Whether he's a purist for procedure, or whether he's a purist for justice; whether he'd ignore private knowledge as not evidence—or value it as the truth. They're both right, you know. You remember Jessel on public policy. It's public policy to ignore speculation on public policy—and uphold contracts. But whoever wrote this knew that, pedant though I am, I incline to a natural sort of justice rather than to formality. A lawyer, you suggest."

"And as you point out, sir, the language also smells lawyer-like. How cleverly he avoids the words 'proved in evidence'."

"A nice observation, Roper."

The reading proceeded.

"If that is so, somebody ought to tell you that there are more chemists than one in this case.' (Note the omission of 'then' after 'so'—accidental or on purpose?) 'At least one of the lawyers who lived at the time in the hotel has dabbled in chemistry.'"

"Meaning Romilly, I suppose," conjectured Roper, unhappily.

The Judge was on another, less obvious point.

"Do you notice, Roper, the mark of deletion there? The typer nearly tope (is that the word in basic?) 'at the material time'. A layman would have said 'at the time the Judge was killed'.)

"Many lawyers hated the sight of Judge Gosling, because——' (that word's crowded in) 'lawyers saw through him.' An educated man would not put the 'because' in except as an afterthought to make himself sound ignorant."

Roper was moved to protest: "Aren't you reading too much in, sir?"

"Yes, I'm afraid we lawyers treat documents as the Christians treated the Bible—*liber in quo quærit sua dogmata quisque*."

He continued reading :

"And because lawyers sit in a Judge's Court and know how bad he is. And he often says bad and harmful things to them. And he has a bad effect on their careers and on their minds.' (How nicely put! No ignoramus wrote this." Said Roper: "What a plethora of 'ands'—accidental or on purpose?") "'and a lawyer might grow old before his time and be unhappy, and feel indignant at all the injustice.' (Good, an ignorant man could have written that. So might a poet. If a lawyer, then with a fine fictional touch. Observe, also, that he doesn't add 'to himself and to others'.")

Roper, who was beginning to see implications, made a suggestion.

"You say, 'he', sir—it might be 'she'."

The thought seemed to interest the Judge.

"Because of the 'be unhappy', you think?"

"Precisely, sir."

"Very shrewd, Roper. But we have no female lawyers worth speaking of."

The Judge was disguising his reflections.

"I am against your assumption that it is a lawyer, sir."

"My dear Roper, I know that. I am merely applying a

coherence theory. I quite agree that there's a female possibility. Let's continue:

" 'Now, a lawyer would have opportunities of going to Judge Gosling's room. He kept law-books there.' "

"Who would know that? "

"The receptionist might."

"Still on women, eh? You're getting an obsession, son. 'And when the prisoner said he didn't know about the empty bottles, that could be true, couldn't it? His counsel could have known a different way, couldn't he? or from someone else?'

"Beautifully logical—and tautological, and with a suggestion of ignorance incompatible with such logic.

" 'And if you think that Armiger is a dangerous fanatic, is it not possible that there are greater fanatics?' (Didn't know whether to say 'than he' or 'than him'.)

" 'A fanatic is as likely to be dressed in black coat and striped trousers as in a pullover.' "

"A feminine touch," said Roper.

Said the Judge firmly, "I ignore the authorship of anonymous letters." Nevertheless, he finished re-reading:

" 'Judge, the writer appeals to you that your conscience won't let an innocent man suffer if you suspect somebody else.

Signed, A BELIEVER IN CONSCIENCE.' "

"Beautifully rounded," commented the Judge. "A case of Conscience. Conscience at the beginning of the letter and at the end. A certain artistic unity."

"Like one of counsel's speeches, you think? "

"To spoil the artistry there's a P.S."

"A woman," murmured Roper.

" 'It may interest you to know that at least one lawyer in the hotel suffers from asthma and uses adrenalin. Could that not have been used? ' "

"A sting at the very end of the tail," commented Roper.

"Neat. The overstatement of the obvious; but how important! "

Sir Horace lapsed into thought, and said nothing for about three minutes. Roper watched him anxiously.

When he spoke again, he said:

"There's an additional artistry here, isn't there? What started with an anonymous letter is finishing with one."

"In general, Judge," asked Roper, "what is the correct attitude to anonymous letters sent to Judges?"

"We burn them usually, but even if I burnt this I couldn't forget it. Just as the police can't forget the contents of an improperly obtained statement, and it produces consequences, just as Fremantle found when he followed up the alleged Williamson letter."

"Could you inquire into it?"

"That wouldn't solve any problem. It's like somebody throwing in a suggestion that the jury's corrupt. One can inquire into it, but it's not safe to keep the jury. Here an appeal is made to my conscience. And if my conscience is affected by it, what does it matter that the manner of touching it is irregular?"

"You could prosecute the author?"

The question was put in order to remove a fear—Roper had his loyalties.

"You've a lot to learn, Roper."

"That's why I'm here, sir," replied the other, satisfied, though he knew an evasion when he heard one.

"On our way, then, let's see what more we can teach you."

The second half of Sir Horace Harwood's summing up, following some recapitulation, at the outset left everyone in doubt.

One point remained to be dealt with—which, said the Judge, on reflection (was that a hint? thought Romilly), he realised to be of paramount importance.

Evidence had been produced towards the end of the hearing which revealed a surprising state of affairs. Much more, very much more, interference had been effected with the insulin bottles than could have been done in half an hour. He reminded the jury of the wardrobe drawer.

The defence's argument on that was important. If there was interference unproved to be by the prisoner,

then how could they ignore the possibility that another hand was at work, that perhaps the prisoner had not interfered at all?

That was the argument for the defence, an argument which loses weight, when one considers that it was evidence produced by the defence in circumstances which suggested that the prisoner knew more about the whole affair than anybody else. (Helen Davenport, looking from the side of the court, saw that Romilly looked haggard and Armiger pale.)

The Attorney-General had asked the prisoner how his counsel knew about the wardrobe drawer. And he could not give an explanation. It appeared, then, that the prisoner had not proved the certainty of another hand so conclusively as to entitle the defence to say that somebody else had clearly interfered—or that more was alleged against the prisoner than he could possibly have done in the time available to him. ("We've lost," murmured Romilly to Brennan, now sitting by him.) At least one person in the court felt that virtue had been squandered to no purpose.

That, said the Judge, had been his view last night.

Reflecting, however, overnight, on many aspects of the case, he had come to the conclusion that the Attorney-General's criticism was not fatal. They still did not know how the defence found these facts out. Nevertheless, the jury might feel that it would be very dangerous completely to disregard the considerable fact that much, much more had been done in the way of interference than was directly alleged against the prisoner. They might think it highly dangerous to ignore a fact which was not completely accounted for. (The court seemed to lighten.) It might be irrelevant, but if they felt doubt, they would acquit the prisoner. Did they feel that way about it? It was up to them. But he emphasized that it called for their careful consideration.

He would not repeat any of what he had said, only to tell them that their views on the personality of the prisoner or his opinions did not matter. If in their own conscience, as jurors, they were satisfied of his guilt, let them act on their decision boldly. If, however, their consciences told

them that a real doubt was left, then they must give the prisoner the benefit of it, for that meant the case was not proved, and they must acquit the prisoner.

The jury retired laden with maps, bottles and cartons galore, and the Judge's blessing.

When they had been out five minutes and opinion was still fluid, the Judge called them back. After they filed in, he said to them:

"Members of the jury, if there is any point of difficulty, I want you to ask me about it. I also want to remind you of what I know juries are not always clear about. A verdict of guilty must be unanimous—all twelve of you. A verdict of acquittal, obviously, does not entail the same high standard of consent, unless of course there is such a division of opinion as to be an irretrievable disagreement. I do not suppose that need happen here."

The jury retired again.

The Judge in his room confided to Roper: "I pine for the days when a Judge could imprison a jury with impunity until they returned the verdict he wanted."

Roper said, "You weren't vigorous enough, Judge. What will you do if they convict?"

Said Sir Horace: "I'm a good Judge, and I've got this case into a terrible mess."

"All," said Roper, "because of a Judge without a conscience."

Their fears were not groundless. The pig-faced man was fighting hard.

"I can't persuade you, ladies and gentlemen, but I won't agree with you. I've got a conscience, too."

The Judge was called back into court. This time the Scotsman took the initiative. It had been agreed to ask the Judge more about the need for unanimity for the purpose of an acquittal. The Scotsman was not true to his brief. In a case of conscience, his conscience had its own pattern of behaviour.

"My lord, will you so kindly explain to us what the position is if all our doubts are different?"

The Judge saw light. His quick reply prevented the

pig-faced man from protesting that that wasn't the question.

"That would mean that you unanimously have doubt."

The Clerk of the Court chose this moment to play an important rôle for the first time in his life. He could see the incipient squabble; and he knew how to quash it. He rose to his full, majestic height.

Fixing the pig-faced man with a glare that would have penetrated the consciousness of even a more hidebound being, he pronounced, "You find the prisoner 'Not guilty' and that is the verdict of you all?"

It was more than a question. It was a declaration.

"Yes, sir," replied the Scotsman.

Outside the court, Romilly said to Helen Davenport, "I feel that virtue has gone out of me."

"Who wants virtue, anyway?" she replied.

Seeing them together, Hewitson said to Roper, "Romilly seems to specialize in cases where his emotions are more engaged than they should be. I confidently anticipate that we shall see him before long combining the rôles of co-respondent and counsel for the guilty female."

Said Roper, with unexpected asperity, "He's a better barrister than you'll ever be. You've got a brain. He's got a mind."

The sight of Armiger approaching Romilly and looking at him with a gratitude that no Communist could think it possible to be felt for a spokesman of the capitalist order, indicated that Roper might be right. At least one Communist had been convinced that justice was more than an epiphenomenon.

Having said goodbye to Romilly and Hewitson, the Attorney confided to the Judge, "I think I prefer character to personality."

Some hours later, Sir Horace Harwood was talking to Romilly in his private room.

"I like your language, Romilly. No basic English for you, I take it."

"Celestial influences preserve me from engendering any such abortionate diction."

"That's the style," murmured Sir Horace. "One more thing. You'll forgive me for mentioning, Romilly. I only mention it because you're such an able man. I am always upset when I see a barrister struggling in a case where his own sympathies, shall I say, are too deeply engaged. I shouldn't take such a case again, if I were you, Romilly. A bad result would be fatal. Please don't do it again."

Said Romilly, "I'll be hanged if I do."

